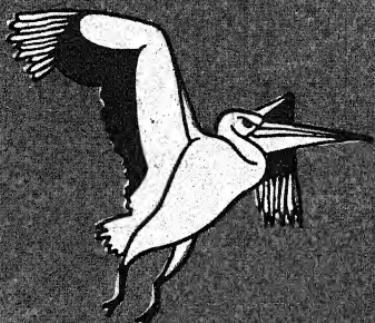


PELICAN  
BOOKS

A HISTORY OF  
THE ENGLISH  
PEOPLE

(I)

ÉLIE HALÉVY



भारती-भवन पुस्तकालय, प्रयाग

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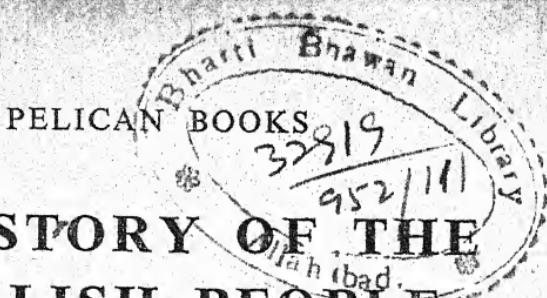
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**A HISTORY OF THE ENGLISH PEOPLE  
IN 1815**

**BOOK I: POLITICAL INSTITUTIONS**

## PUBLISHER'S NOTE

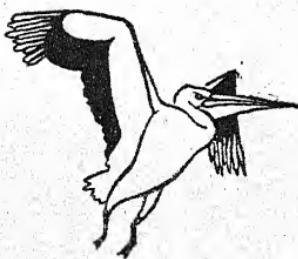
This volume consists of BOOK I (POLITICAL INSTITUTIONS) from Volume One of the original edition. The remainder of the work will follow, each part of the original edition making one volume in Pelican Books. Volume One will be completed in two further parts: BOOK II (ECONOMIC LIFE), BOOK III (RELIGION AND CULTURE).



# A HISTORY OF THE ENGLISH PEOPLE IN 1815

BY  
ÉLIE HALÉVY

BOOK I: POLITICAL INSTITUTIONS



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## INTRODUCTION

EVERY student, either of the past development or of the present working of British institutions, must be grateful for the fact that M. Elie Halévy's well-known History is to appear in an English translation.

Vol. I was first published in French in March 1912. The completion and publication of the later volumes was interrupted by M. Halévy's duties during the Great War, but Vols. II and III (bringing the History to 1841) appeared in 1923.<sup>1</sup>

Meanwhile, this first volume, on "England in 1815," is not only a self-contained analysis of English conditions at the date from which the History starts, but an admirable instance of M. Halévy's method and point of view. Anyone who will open this volume and read a few pages will be convinced of M. Halévy's enormous learning and strict impartiality. But it is only when reading the volume as a whole that one comes to understand in what respects it differs from other English histories either of this or earlier periods.

A great English historian declared that history was "past politics," and readers of M. Halévy's later volumes will find that the greater part of his work falls under that definition—especially if it is taken to include the relation between the policy of England and the policy of other Powers. But past politics can be written about in several different ways. A historian may give us an accurate description of such political events as the passing of laws, the rise and fall of parties, and the making of wars and treaties; and he may combine his narrative of political events with an analysis of the characters and motives of the statesmen who have been directly responsible for those events. Both these elements, set out with meticulous care, and drawn from an independent analysis of contemporary sources, will be found in M. Halévy's volumes. But the outstanding importance of his work lies

<sup>1</sup> The work was finally completed in five volumes.

## INTRODUCTION

in the fact that he has accepted a third and more difficult task. He has tried to explain *why* statesmen found it possible in one year to pass laws and carry through executive policies which were impossible in another year, and even *why* it was that statesmen found themselves in different years desiring to pass different measures.

So far the only interpretation of history in that sense has been based upon an analysis of economic forces—the growth of new forms of industry and finance, the extensions of oversea trade, the commercial rivalry of nations, the appearance of economic “class-consciousness” and the like—and on a deduction from that analysis of the resulting legislation. M. Halévy—and it is this which constitutes the essential originality of his method—denies that economic changes, or the personal characters of statesmen, or even the forms of political constitutions, are the only, or, in the case of English history, even the most important factors in national evolution. Other histories of England have sometimes interposed isolated chapters on “Literature, Science and Religion,” as interruptions to a narrative of political events. M. Halévy presents the growth of ideas and of the feelings arising from ideas as essential factors in his analysis of causes and effects. In Book II, for instance, after stating that “in no other country of Europe have social changes been accomplished with such a marked and gradual continuity” as in England, he goes on to say: “The source of such continuity and comparative stability is, as we have seen, not to be found in the economic organization of the country. We have seen, also, that it cannot be found in the political institutions of England. . . . To find it we must pass on to another category of social phenomena—to beliefs, emotions and opinions, as well as to the institutions and sects in which those beliefs, emotions and opinions take a form suitable for scientific inquiry.”

A few English writers like Professor Dicey and Mr. C. R. Fay have successfully attempted such a synthesis for particular periods and aspects of our nineteenth-century history. No one would, I think, claim that they have approached M. Halévy either in the width of their range or the depth of their detailed knowledge.

M. Halévy in his Preface appears to deny himself any claim to be a specialist researcher into original sources. Those

## INTRODUCTION

who notice throughout his book the use which he has made of little-known contemporary material, and even of the forbidding mass of evidence in old newspapers, will not be so modest on his behalf. But on two points—the growth of the characteristically English utilitarian philosophy, and the history of English religion from 1750 to 1850—he is not only a researcher but the only researcher who has examined those subjects both with scientific thoroughness and with scientific detachment. His three volumes on “*La Formation du Radicalisme philosophique*” (Librairie Félix Alcan, 1901) show that he is not only himself an original thinker on the problems concerned, but that he is the only living man who has ever been through and reduced to intellectual order the enormous mass of Bentham’s manuscripts now deposited in the library of University College, London. And it was a happy instinct which led him, after his Bentham researches, to the studies which resulted in his articles in the *Revue de Paris*, August and September 1906, on “*La Naissance du Méthodisme en Angleterre*.”

At first sight Evangelical Christianity and non-Christian Radicalism would seem to be at the opposite poles of human thought. But when, forty years ago, I first became a practical politician, I discovered how strong was the tradition of a working alliance between the two forces. On some of the most interesting pages of this work (in Book III) M. Halévy explains the causes of this apparent paradox by showing the high, almost ascetic seriousness which both groups shared, and which, in spite of Wilberforce’s social conservatism, and James Mill’s grim antipietism, brought them together whenever humanitarian work had to be done. Both groups shared in the destruction of the slave trade and of slavery, and M. Halévy quotes (in Book III) Bentham’s declaration, “If to be an anti-slavist is to be a saint, saintship for me. I am a saint!” Both groups worked together on the British and Foreign School Society in the early struggles for popular education. Lord Shaftesbury, the saint, was surprised to find that his most effective allies in the fight for factory regulation were to be found among men who rejected both his constitutional and his religious opinions. And when in 1865 Governor Eyre’s case revived the problem of slavery, John Stuart Mill appeared as an ally of the evangelical

## INTRODUCTION

missionaries. It is his sensitive understanding of such facts—due perhaps in part to his belonging to a family in which the traditions of French Protestantism and French Liberalism were united—which has enabled M. Halévy to carry out his purpose of making us “realize the complexity and variety of the strands which, woven together, compose the facts of history” (p. xi). M. Halévy not only knows the English tradition and is capable at times of smiling at it ; he has the additional quality which is necessary for full understanding, in that he really likes the Englishness of the English people.

Many readers will seek to find in M. Halévy’s work a helpful analogy between the position of England after 1815 and her position a hundred years later, after the Peace of Versailles. The analogy is, of course, in many respects very close. One follows with a keen sense of recognition his account of our blind efforts after Waterloo, in a society disorganized both by war and by industrial invention, to regulate the distribution “of functional activities and economic rewards” (Book II). M. Halévy himself has told me how, when he returned to his house after the war, and took up again the sheets which recorded (in Vol. II) his conscientious but comparatively uninterested researches into the controversies of 1816 to 1819 as to the resumption of the gold standard and the rate of exchange of paper money, he found that the old facts had suddenly acquired a new and menacing vividness. But to me the re-reading of Vol. I has rather brought home the profound intellectual differences between the two situations. The whole conception of the universe which in different ways was shared by men so unlike as Peel and Wilberforce, Whately and Wordsworth, Shaftesbury and Gladstone, has, apparently, as an effective factor in social and political events, disappeared for ever. A hundred years hence, in estimating the intellectual forces of our own time, a future historian may have to search not so much in the records of the churches as among the obscure proceedings of working-class propagandist organizations, and to trace the relations of those proceedings to the conclusions of the twentieth-century biologists and psychologists, and of the historians and poets who in each generation undertake the ever-fresh duty of reinterpreting the past.

INTRODUCTION

In writing his history M. Halévy has followed the old custom (unfortunately abandoned, under the influence of Lord Acton, by the *Cambridge Modern History*) of giving full references to his authorities. I can imagine nothing more delightful for a special student of any period or section of English nineteenth-century history than to acquire the habit of looking up M. Halévy's references. He will realize how stern has been the effort of compression which has enabled M. Halévy to bring his book within its present compass. But he will also understand how well founded is M. Halévy's gentle reproof to English scholars that "it is impossible to regard as sufficient the monographs already written, which deal with particular aspects or special points of English History" (p. xi). We created during the 19th century our Civil Service on principles then new, but since largely imitated elsewhere. No English account of that process exists. The industry and insight of Mr. and Mrs. Webb have brought the history of English Local Government up to 1835, but nothing exists corresponding to their work for the all-important period which followed 1835. The histories of nineteenth-century English religion are partisan compilations or chatter about Newman. Is it too much to hope that M. Halévy may not only instruct some of our younger students of history, but may stimulate them by his example to efforts like his own?

GRAHAM WALLAS.



## PREFACE

I AM well aware of my boldness in undertaking to write the history of the English people during the 19th century. Even in the case of very distant periods, for which the evidence is more scanty, historians are distrustful of works covering a wide field and prefer monographs to a synthesis. Such an attitude seems even more justifiable in the study of modern times, where the investigator feels himself at first quite overwhelmed by the mass of evidence at his disposal. Nevertheless I am, I think, in a position to plead in my favour several extenuating circumstances.

In the first place, it is impossible to regard as sufficient the monographs already written, which deal with particular aspects or special points of English history. To justify the labours of specialists attempts must be made from time to time to utilize their researches for a more general history: such is the aim of this book. It does not fall within my province to relate in detail the events of military, diplomatic or constitutional history, but rather, by considering together all its various aspects, to depict British civilization and society as a whole, and to show how the different orders of social phenomena—political, economic and religious—combined with each other and reacted on each other. Perhaps, by the very fact of employing this synthetic method, I shall avoid a fault common among writers of monographs. Man inevitably generalizes, even when he is at pains to avoid generalization. The historian, who deliberately sets himself to study Society under one aspect alone, unconsciously comes to consider this aspect as possessing a special importance above the others, and even as being the key to their explanation. And he will thus come to teach according to the special class of phenomena which he studies, either a political or a religious or an economic philosophy of history. The method here followed, precisely because its object is less narrowly limited, is better able to guard against excessive simplifications and to make us realize the complexity and variety of the strands which, woven together, compose the facts of history.

## PREFACE

Moreover, when we study the history of modern Europe, or, to speak more particularly, that of modern England, we are surprised to find how inadequate are the detailed researches which have been made in this field. To take first religious history. Despite their importance, we possess no really scientific work dealing with the dissenting sects, nor even, which is still more surprising, with the Church of England. Or, again, to take economic history. There is certainly no lack of works dealing with the condition of the workers or technical improvements, but there are very few works indeed which discuss the industrial, commercial or financial organization of the employers. It would be easy to multiply examples of this deficiency, and here perhaps lies the greatest danger attendant upon the exclusive employment of the monograph.

It is obvious that really valuable work is impossible without a division of labour. But it is often forgotten that there can be no rational division of labour without a preliminary coordination, and that it is the province of general history to effect this coordination by guiding the researches of specialists. I hope that my book, by exposing the lacunæ in our knowledge, and bringing to light our uncertainty or ignorance on many points of importance, will contribute towards the filling of these gaps and towards the substitution of knowledge for uncertainty and ignorance. May the theories advanced in this work afford fresh stimulus to special studies, which will complete, correct, if need be confute, these very theories. I have no higher ambition.

From another point of view, I am aware of my boldness. A Frenchman, I am undertaking a history of England. I am attempting the study of a people to whom I am foreign alike by birth and by education. Despite copious reading, visits to London and the provinces, and frequent intercourse with different circles of English society, I have nevertheless been obliged to learn with great difficulty, and in a manner which would seem necessarily artificial, a multitude of things which even an uneducated Englishman knows, so to speak, by instinct. I fully realize all this. Nevertheless I am firmly convinced that the risks I have taken were risks well worth the taking.

In the first place, where the national life of England differs from that of my native land, I may claim to possess a valuable

## PREFACE

capacity for wonder. To an Englishman, English society is the whole of society, the ideal society. Buckle, in a work celebrated half a century ago, avowedly treated all forms of human civilization as so many deviations from the true norm of civilization, the civilization of Great Britain. Very different is the attitude of the observer from abroad. A great number of characteristics which, being familiar to the natives from birth, have come to form part of their intellectual and moral nature, are for him matter of astonishment—whether of admiration or disapproval is indifferent—and demand from him an explanation. Indeed, of all the nations of Europe, it is perhaps the English whose institutions must, in many respects, be regarded as being beyond the institutions of other people, paradoxical, “unique.” In short, because I am French, my knowledge of English life is, indeed, more external than would have been the case were I a native Englishman, but on the other hand, for that very reason it is perhaps more objective.

Moreover, whatever the differences between English and continental life, we must beware of exaggerating their importance. To be sure, the Frenchman feels himself in a foreign land when he crosses from Calais to Dover, but how insignificant the difference would seem to an Asiatic traveller from Calcutta or Pekin. Between Latin Catholicism and Anglo-Saxon Protestantism there seems a wide gulf, but what is it to the distance which divides European Christianity as a whole from Brahminism? The European nations at the present day are, indeed, in a very ambiguous position. Divided one from another by strong passions, they are nevertheless in many respects internationalized by common interests, by a common outlook 'on life, and by a common literary and scientific culture. The institutions or ideas which one nation has neither borrowed from nor imparted to their neighbours will be found on analysis to be few indeed. The difference between the nations of Europe consists after all not so much in the elements which compose their national character, as in the different proportions in which are combined, in each nation, elements common to most or all. The great political invention of modern England has been representative democracy. The invention, however, has spread and is still spreading, and with increasing rapidity, through-

## PREFACE

out Europe—indeed the entire world. Indeed, representative government bids fair to become part of the common inheritance of mankind. How, then, have these representative institutions of England been built up? Along what lines have they been developed and modified? What laws governed the process? Parliamentary government alike in the State, the factory and the Church had become an almost sacred tradition to the nineteenth-century Englishman. What were the causes, what the forces, which had produced this effect? These problems are of interest to all Europeans. For their study all Europeans are competent.

June, 1912.

E. H.

*I must express my thanks to M. Lucien Herr, Librarian of the Ecole Normale Supérieure, who read my work in manuscript and assisted me with his advice; and also to Miss Eileen Power, Girton College, Cambridge, Shaw research student of the London School of Economics and Political Science, who kindly undertook some researches for me in London.*

E. H.

## TRANSLATOR'S NOTE

FOR the translation of this book I am responsible. I may, perhaps, add that the translation has been twice read by M. Halévy, to whose kind help I am indebted for a large number of most valuable suggestions and criticisms.

E. I. WATKIN.



## CONTENTS OF BOOK I

	PAGE
INTRODUCTION. By GRAHAM WALLAS . . . . .	v
PREFACE . . . . .	xi
TRANSLATOR'S NOTE . . . . .	xv

### CHAPTER I

THE EXECUTIVE—THE JUDICATURE—THE ARMY— THE NAVY . . . . .	23
--	----

The King—The Cabinet—The Central Government—The Judicature—Judges and Barristers—Local Justice and Local Government—The Navy—The Army—Foreign Policy of the British Government.

### CHAPTER II

THE LEGISLATURE AND THE SUPREMACY OF PUBLIC OPINION . . . . .	147
--	-----

The Representative System of the United Kingdom—Popular Liberties—Parliament and Public Opinion—The State of Parties in 1815

INDEX . . . . .	254
-----------------	-----



A HISTORY OF THE ENGLISH PEOPLE  
IN 1815

BOOK I: POLITICAL INSTITUTIONS



## POLITICAL INSTITUTIONS

1748. Montesquieu, in his *Esprit des Lois*, proposed the political institutions of England as a model to the Governments of the Continent. At that time the Whigs held office in England. The feature of the British Constitution which excited Montesquieu's admiration was the guarantees it provided for the liberty of the subject. For Montesquieu the best and freest type of constitution was the "mixed" or moderate constitution, which combined the distinctive principles of monarchy, aristocracy and democracy. Such a constitution was to be found in England. And again the best and freest type of constitution was that in which there is a clear-cut separation between the three departments of government—the legislature, the executive and the judicature. This also was to be found in the British Constitution.

1815. We now find the Whigs defeated and demoralized, reduced to the condition of a permanent Opposition. With scarcely an interruption for over thirty years past the Cabinets had been Tory, supporters of the Royal Prerogative. Aboukir and Trafalgar, Salamanca and Vittoria, Waterloo, the two Treaties of Paris had bestowed upon the Tory programme the undeniable consecration of success. What, then, had taken place since Montesquieu wrote? Had England passed through revolutions and *coups d'état*? Most certainly not.

In England itself Montesquieu's theory continued to be the classical interpretation of English constitutional law. Blackstone, the great Tory jurist, in his *Commentaries on the Laws of England*, is generally content to follow in the steps of the *Esprit des Lois*. An examination, therefore, of the political institutions of England, as they existed in the opening years of the 19th century, raises a very delicate problem. That problem is to understand the development by which a theory elaborated to defend a constitution regarded by the Whigs as essentially a free constitution served fifty or sixty years later to defend a constitution denounced by

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the Whig Opposition as oppressive and reactionary. Was it that the constitutional forms, without being directly violated or abolished, had been worked in a manner foreign to their true intention and thus perverted? Or was it rather that the reactionary movement had affected not the Constitution itself, which remained intact, but the public opinion of the country, freely expressed through the forms of this very Constitution? Perhaps the Liberalism of 1748 no longer satisfied the demands of the Liberals of 1815. Or was the Constitution after all freer than would be imagined from the Opposition complaints? The very ease with which these complaints found expression, together with the fact that the Government was compelled to meet the grievances of the Opposition with a host of partial concessions, proves how hard it is to arrive at an adequate definition, a definition that will do justice to all the complex factors at work, of the period known to historians as the Tory Reaction.

## CHAPTER I

### THE EXECUTIVE. THE JUDICATURE. THE ARMY. THE NAVY

#### THE KING. THE CABINET. THE CENTRAL GOVERNMENT

*The King. His Sons. The Prince Regent.*

WHEN George III ascended the throne he was not satisfied, as had been the first two monarchs of his dynasty, to be merely a German prince, well paid by the English aristocracy for acting as a figure-head in London. He wished to effect in his personal interest a restoration of the royal authority, which had been so weakened of late, and to govern England as the other European sovereigns governed their countries, as he himself governed his electorate of Hanover. The Tory Reaction dates from his accession. But what, after all, had been the success of this new policy of King George? His personal popularity in 1815 is certainly beyond dispute. The gentry had always admired in him his tastes for country life and sport, and was not scandalized by his indifference to literature, science and art. The middle classes prized his strict virtue, even his bigoted Protestantism. The vast majority of Englishmen shared his prejudices against Catholic emancipation, his stubborn determination to carry on the war with France. We must not, however, forget that the monarch and his Court were marked by a German pedantry and formality which had given frequent offence. Moreover, he had been for a long period the victim of intrigues among parliamentary cliques, exposed to the insults of London journalists, to hostile demonstrations by the mob, to the attempts of assassins. It was, in fact, only in 1810, when King George, who had already several times been deprived temporarily of his reason, became permanently insane, that he won the unbounded veneration of the people.<sup>1</sup> His

<sup>1</sup> Campbell, *Lives of the Chancellors*, vol. vi. p. 211 n. "I have heard a high legal dignitary, now no more, say: 'It is a remarkable circumstance that George III, at the commencement of his reign,

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

misfortunes won him sympathy as his virtues had won him respect: monarchy in England became a harmless fetish. The King George of 1815, blind, deaf and insane, exactly realized the ideal of a puppet king, so dear to the eighteenth-century Whigs, and the puppet became the popular idol. Thus at the very moment of triumph for the party, which is commonly believed to represent the principle of autocracy, the cause of constitutional government won a brilliant victory. The insanity of the King of England made not the slightest change in the government of the country. The same Cabinet, supported by the same majority, remained in office. In fact, if we were to confine our attention to the proceedings of the Government, we should be unable to distinguish between the time when England possessed a monarch and the time when she possessed only the shadow of a monarch.

But perhaps the Royal Family boasted a member sufficiently intelligent, energetic and influential to assume the government of the country, when the King himself had become incapable of rule? No; among the numerous sons of King George not one was fit to govern. With the exception of the sensible but insignificant Duke of Cambridge, and the Duke of Sussex, a Liberal and a friend of reform, who had, however, lost caste by his marriage with Lady Augusta Murray, all the Princes were objects of universal hatred or scorn. Even when they had inherited their father's virtues, they made those very virtues odious. Their love of discipline was tyrannical, narrow, stupid. The Duke of Clarence, who served in the Navy, drove his subordinates to exasperation. In 1798, despite the flattery he received from Nelson, the King was forced to recognize his unfitness for command. The Duke of Kent, a religious man and a philanthropist, caused a mutiny at Gibraltar by his excessive zeal for the repression of drunkenness in the Army. He also was compelled to resign. The Press was on the watch to expose and exploit the scandals caused first by one then by another of the Princes. When Mrs. Jordan, the celebrated actress, lived

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when in the full possession of his faculties, was abused, ridiculed, thwarted and almost driven into exile; but when he was deprived of his reason, the nation, falling prostrate before him, called out: A God! A God!"

## POLITICAL INSTITUTIONS

with the Duke of Clarence as his avowed mistress, rumour declared that he was supported by her earnings. The Duke of York, the favourite son of King George and the Commander-in-Chief of the Army, was considered a man of virtue and a good administrator. Then it was discovered that he kept a mistress and that his mistress had organized with his connivance a regular trade in commissions. The affair caused widespread scandal, a parliamentary inquiry was instituted, and the Duke had to retire into private life for two years. The Duke of Cumberland, perhaps the most intelligent of the King's sons, made himself particularly unpopular by his unbending Toryism. One morning he was found by his bedside wounded, while in an adjoining apartment his valet was lying wounded to death. Despite the verdict of an impartial jury, report accused him of murder and of infamous vices.<sup>1</sup> To hide himself from popular view he withdrew to the Continent, to return in 1815 married to the Princess of Salm, a lady of doubtful reputation. To support his new establishment he asked Parliament for a higher grant in the Civil List. The House of Commons, after a most insulting debate, refused his request. And what, finally, can be said for the weak and contemptible Prince of Wales, who from 1810 onwards exercised the functions of Prince Regent?

Before his regency he was only known to the public by his constant squabbles with his father and by his equally constant requests to the nation for money. One of the regular occupations of Parliaments for many years was the payment of the Prince's debts. By a promise to put his finances in order, to pay off his creditors and to increase his income, the nation at last secured his marriage. He had one daughter by his wife Princess Caroline of Brunswick. After the child's birth the couple separated and the wretched story of their quarrel began. The Prince of Wales considered himself an unofficial leader of the Opposition. The Whigs therefore took the part of the husband, the Tories of his wife. But later on, when the Prince became Regent, he became at the same time a Tory. Henceforward he found his supporters in the Tory ranks, while the Whigs espoused the cause of the injured

<sup>1</sup> For the scandal of the Duke of Cumberland, see Lady Anne Hamilton, *Secret History of the Court of England*, vol. i. pp. 156-99.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Princess. And the Prince brought discredit on both parties in turn, as he joined first the one, then the other. To be sure, he was no country squire like his father and brothers. He had pretensions to intellectual culture. Sheridan had been his intimate friend. At their first meeting he won the heart of Thomas Moore, the poet. Scott, whom he entertained at luncheon, left his presence intoxicated with delight and loyalty. But that was not the way to become popular in England. The public forgave his drunkenness, his quarrelling, his immorality, for these were manly vices. The public could not forgive his effeminacy, his cowardice, which had become a byword, and his persistent desire at the age of fifty to be not only the most fashionable but the most handsome man of his time, the Adonis of European aristocracy. Four hostile Courts: such was the sight presented by the English Royal Family at the beginning of 1815. In a small and simply furnished house at Windsor the old Queen was watching over the last years of her husband, a mental and physical wreck. The Prince of Wales kept up a royal establishment at Carlton House, where he entertained lavishly. His morganatic wife, Mrs. Fitzherbert, to whom he had been secretly wedded according to the rites of the Catholic Church, a woman universally respected, had been forsaken. The Marchioness of Hertford was now the favourite, and she and her set—the Marquis of Hertford, the Marquis of Yarmouth, and the Marquis of Headfort—led the Prince and distributed his patronage. Kensington Palace was the headquarters of the Princess of Wales. She was a poor, brainless creature, whose head had been turned by the court paid to her by the men of letters, statesmen and leaders of fashion, who wished to annoy the Prince Regent. Meanwhile at Warwick House Princess Charlotte, the daughter of the Prince and Princess, led a dreary and commonplace existence. Her father loathed her and in his jealousy tried to get rid of her. He decided to give her in marriage to the Prince of Orange, who would remove her to Holland. The Princess resisted the scheme and took shelter with her mother. To fetch her home the Prince had to send a regular embassy of ministers, headed by the Lord Chancellor. The middle class and the populace of London joined in the quarrel, and not on the side of the Regent.

## POLITICAL INSTITUTIONS

When the allied sovereigns visited London after the victories of 1814, the English were not slow to show them how little they respected their rulers. Whenever the Prince drove out in his carriage, whenever he appeared at the theatre, the mob either kept a complete silence or booed. Whenever Princess Charlotte appeared there was an outburst of applause. When these monarchs attended a sitting of the House of Commons, the Opposition raised a full debate on the Regent's behaviour to the two Princesses, in which his vices were denounced, their sufferings deplored.<sup>1</sup> Such were the facilities afforded by the institutions of Great Britain to the open and legal expression of public contempt for the disorders of the Royal Family. Despite fifty years of the Tory reaction England was not governed by a Court. Whether the head of the State were popular like George III or unpopular like the Regent, was in England a matter of less importance than might be expected. For he could not exercise the control over the Government that was exercised by the head of the State in every other European country.

### *The Influence of the Crown. The Quarrel between the two Parties.*

Of what grievance, then, since the Tory reaction began, did the Whig leaders complain? They feared lest the King should, to use the phraseology of the time, compensate for his diminished "prerogative" by the increase of his "influence." By prerogative we are to understand the constitutional rights of the King, derived from legislation or custom, by influence the indirect action of the King upon Parliament by his employ-

<sup>1</sup> *Crevey Papers*, vol. i. p. 195 sqq., letters to his wife, June 14 and 21, 1814. "All agree," he writes in the letter of the 14th, "that Prinny (the Prince of Wales) will die or go mad. He is worn with fuss, fatigue and rage." See also a letter from Lord Grenville to the Marquis of Buckingham, May 9, 1814 (*Court of England under the Prince Regent*, vol. ii. p. 75). "We are full of nothing but very ridiculous preparations for very foolish exhibitions of ourselves to foreign sovereigns (if they do come here) in that character which least of all becomes us—that of courtly magnificence. Our kings never have, and I hope they will never be able, to come near their neighbours in that respect."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

ment of the means of corruption at his disposal—distribution of money and especially distribution of places.<sup>1</sup> According to the theory of the division of powers, while Parliament makes the laws, it is the office of the King to carry them into execution, or more accurately, to choose the executive. It would seem, therefore, from the very nature of the Constitution, that the State departments, the Government offices, must be under the immediate control of the head of the executive. Such departments were the Treasury, the Exchequer, the Secretaryships of State, the Board of Trade, the Board of Control, and the Military Departments. All the offices through which the revenues were collected, Customs Duties, Excise and Direct Taxes, were subordinate to the Treasury. The First Lord of the Treasury was usually the Prime Minister. The Exchequer, at the head of which was the Chancellor, was also a dependency of the Treasury. Immediately the Budget had been passed, the audit of the national receipts and expenditure took place in the Exchequer. The three Secretaries of State were the Home Secretary, the Foreign Secretary and the Secretary of State for War.<sup>2</sup> The Board of Control supervised (controlled) the administration of India. The Military Departments were the Admiralty, the War Office and the Artillery Office, also the Military Treasury or the Paymastership of the Forces. The most coveted offices were by no means always those which from their functions were in a position to exert the most direct influence on the national policy. They were the offices which disposed of the greatest number of places, possessed the most extensive "patronage." The Treasury and the Admiralty had richer prizes to bestow than the Foreign or the Home Office.<sup>3</sup> According to the Whigs, all

<sup>1</sup> Burke, "Thoughts on the Cause of the Present Discontents," 1770 (*Works*, vol. ii. pp. 229 sqq.).

<sup>2</sup> For the history and administration of the three Secretaryships of State, see H. of C., April 3, 1816 (*Parl. Deb.*, vol. xxxiii. p. 892 sqq.). For the respective powers of the Secretary of State for War and the Head of the War Office, see Bulwer, *Life of Lord Palmerston*, vol. i. p. 124.

<sup>3</sup> *Journal of Lady Holland*, September 20, 1806 (vol. ii. p. 184). "Lord Howick is now desirous of retaining the Admiralty: he is satisfied of the impolicy of giving up such a mine of patronage, and has, in idea, been long enough in possession of the Foreign Office to be weary of it, but unluckily it is too late. The Foxites

## POLITICAL INSTITUTIONS

these offices and places constituted the sphere of royal influence. Moreover, a host of abuses which had grown up in the Government departments made the possession of administrative posts even more desirable, and thereby increased the power of the Government in whose hands lay the nomination to these places.

The system by which Government officials were remunerated was nothing less than a scandal. In addition to their fixed salary they received additional emoluments and fees, which were in some cases determined by the amount of money which passed through their hands. Hence it was to their interest, in direct opposition to the interest of the taxpayer, that the State should receive and expend the largest possible sums. Equally scandalous was the management of accounts in the public offices at the end of the 18th century. Each department possessed its departmental treasury, and these treasuries were mutually independent. Between the time when a Government official received money from the Treasury and the time when he paid it out to his subordinates, or again between the time when he received the taxes and the time when he paid them into the Treasury, he could make whatever use of this money he pleased; he could even deposit it in a bank at interest. It was, therefore, to his profit to keep the money in his hands as long as possible, a procedure by no means for the advantage of the national finances.<sup>1</sup> Nor was this all. There were a very large number of posts which were not considered as entailing on their holders any obligation to perform, in return for a reasonable salary, any function of social utility, but as positions of power which carried with them a pension and were purely a reward for services rendered in other spheres, either to the country as a whole or to a party.<sup>2</sup> The adminis-

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have not *one* office which has patronage annexed to it." *Ibid.*, January 20, 1811 (vol. ii. p. 285). In the course of negotiations between Grey and Grenville for the formation of a ministry, Grenville said he was prepared to accept the Home Office on condition that the patronage hitherto belonging to the Treasury were transferred to that Department.

<sup>1</sup> As long as the system of remuneration by fees continued, each of the four Tellers of the Exchequer drew in war-time about £25,000 a year.

<sup>2</sup> John Morley, *Burke*, p. 165.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

tration had thus, as all the world knew, become choked with offices, officially classed as sinecures,<sup>1</sup> posts without any useful service attached, posts whose remuneration was out of all proportion to the service performed, posts whose salary was taken by one man while a deputy did the work at a lower rate. By a judicious distribution of "places" the King was able to create dependents, to buy a body of supporters, and with their help to prevent the free expression in the House of Commons of the national will.

All this formed the burden of Whig complaints. Very different was the language of the Tories, the party which at the end of the 18th century was known as "the King's friends." According to them the working of the representative institutions, as they operated in England, was a source of danger to the prosperity, indeed to the very existence, of the country. It was by no means the case that foreign policy and home government were subject to the control of the people; they were, on the contrary, the sport of aristocratic cabals, determined by the intrigues and caprices of a handful of noble families. The King had become the head of a new party—a party superior to contending factions—whose sole aim was to defend the permanent interest of the entire nation. "To check as much as may be possible the spirit of party appears to be one of the first duties and noblest employments of a King." Thus wrote the Tory, Thomas Gisborne.<sup>2</sup> Who could blame George III for seeking the

<sup>1</sup> For a list of the administrative sinecures in existence about 1815, see *First, Second and Third Report from the Select Committee on Sinecure Offices*, June 20, 1810, June 18, 1811, April 23, 1812, and *First Report from the Select Committee on Finance*, March 27, 1817.

<sup>2</sup> Gisborne, *Duties of Man*, ed. 1795, vol. i. pp. 57-58. Gisborne continues: "To countenance it is to encourage interested nobles and aspiring commoners, factious orators, needy and profligate adventurers to combine in bands and confederacies for the purpose of obtruding themselves into all the offices of Government, and under the name and garb of servants of imposing on the Monarch and on the people chains too strong to be broken."—Cf. *ibid.*, pp. 51, 634. Cf. *Diary of Lord Colchester*, vol. i. p. 322, Hardwicke to Addington, October 24, 1801: "The great object to the King's Minister in the exercise of patronage must be the management of the Parliament and the quiet and orderly government of the country."

## POLITICAL INSTITUTIONS

aid of new men to resist the heads of the great "connections" (the Cavendishes, the Russells), and for bestowing his patronage on these supporters? "The House was not of that aristocratic spirit," said Lord Castlereagh, "that would deprive men of humble birth but of great talents of any participation in the administration of the State."<sup>1</sup> On this interpretation—an interpretation, moreover, by no means indefensible—administrative posts were the stake in a contest between the King and the great Whig families. A severe and an unfair contest, the Tories might well add, so great was the preponderance in the British Constitution of the power of Parliament and of the aristocracy over the power of the Crown.

According to the constitutional divisions of powers, replied the Whigs, it was part of the Royal Prerogative to choose the Officers of State, and this right enabled the King to exercise an illegitimate influence which endangered the balance of powers. This would certainly have been the case had the division between the executive and the legislature been carried out in practice as strictly as the theory demanded. But a mixed or complex Constitution like that of Great Britain is unable from its very nature to define with mathematical accuracy the sphere of each of the powers of government. Each of the powers encroached on the spheres of the others. The question was whether or no these encroachments were favourable to the Royal Prerogative.

Blackstone regards the King as not merely the head of the executive, but also as "a constituent part of the supreme legislative power," and ascribes to him in this capacity the right to reject any measure passed by Parliament which failed to meet with his approval.<sup>2</sup> That is to say, he ascribes to

<sup>1</sup> H. of C., March 29, 1813 (*Parl. Deb.*, vol. xxv. p. 400). Cf. H. of C., May 4, 1812, speech of the Chancellor of the Exchequer: "It was only by such places as these that the Crown had now the power of prevailing on men to accept of offices who were not completely independent in their fortunes, and who were obliged to look to their own exertions for the maintenance and provision of their families" (*Parl. Deb.*, vol. xxii. p. 1171).

<sup>2</sup> *Comm.* 261. It must be added that the Tory lawyers were not in agreement upon this point. When the question of Catholic Emancipation came up in 1795 George III inquired of Lord Kenyon, the Chief Justice of the King's Bench, and through him

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

him a right of veto on the joint decision of both Houses. And this veto would be a clear gain for the prerogative. But, as a matter of fact, the Tory monarch never had occasion, after his accession to the throne, to put into practice the doctrine of Blackstone. Whenever there arose a difference of opinion between the King and his Cabinet about a Bill adopted by the latter, one of two things always happened. Either the majority in Parliament shrank in the disturbed condition of Europe from a constitutional crisis, and therefore consented to postpone the matter to avoid a conflict, or the King dissolved Parliament, and on his appeal to the country the electors returned a majority favourable to the royal wishes. George III never encroached on the functions of the legislature, nor did he ever attack directly the established constitutional customs which secured the independence of Parliament against the Crown, nor even those customs which constituted a perpetual encroachment of the legislature upon the functions proper to the head of the executive. It is true that, despite repeated attempts, the eighteenth-century Whigs never succeeded in placing the Government departments under the control of committees of Parliament, and in thus securing the complete subordination of the executive to the legislature.<sup>1</sup> But it is equally true that the heads of these departments, the Cabinet Ministers, were members of Parliament, and responsible to Parliament for the measures they took, the appointments they made, and for the way in which they carried out the presumed wishes of the national representatives. In the Cabinet<sup>2</sup> both powers,

of the Attorney-General, Sir John Scott (the future Lord Eldon), whether his coronation oath did not oblige him in conscience to veto any measure of Catholic Emancipation. Lord Kenyon and Sir John Scott replied in the negative. (See G. T. Kenyon, *Life of Lord Kenyon*, p. 305 sqq., and in particular pp. 317 and 320.)

<sup>1</sup> See the incidents which led to the formation of the Board of Trade and Plantations in 1696: *Parl. Hist.*, vol. v. p. 977; Burnet, *History of his Own Time*, ed. 1833, vol. iv. p. 294; Burke, *Speech on Economical Reform, Works*, vol. iii. pp. 325 sqq.; East India Bill, 1783, see *Annual Register*, 1784, p. 59; Lecky, *England in the 18th Century*, vol. v. pp. 231 sqq.

<sup>2</sup> It must be added, if we would speak with perfect accuracy, that not all the responsible Ministers belonged to the Cabinet,

## POLITICAL INSTITUTIONS

the legislative and the executive, were confused, but a separation also was made, unnoticed by Montesquieu—a separation, namely, between the agents of the executive who carried on the actual work of government and the head of the executive—who was, moreover, by a fundamental principle of the Constitution irresponsible for the acts of his agents. Such had been the working of Government under the first two Georges, and despite the personal interference of George III in politics it had changed little, if at all, since. As much as King George, indeed more than the King, William Pitt, the Prime Minister, embodied the new and victorious Toryism. Pitt's parliamentary dictatorship, which covered the last fifteen years of the 18th century, did not differ materially from the dictatorship of his father, thirty years earlier. And his father had been a leader and tribune of the Whigs.

Further, the Whigs accused the King of underhand and indirect attempts to undermine the Constitution. By these very accusations, however, they bore testimony that the King was too weak to attempt its open violation. In fact, not only had the prerogative not increased during the reign of George III; it had actually decreased. On his accession King George had renounced, by an act of grace, the revenues derived from the hereditary possessions of the Crown, and had expressed his desire that these revenues should henceforth be collected in the same fashion as the other national revenues and included in the Civil List.<sup>1</sup> Later he had been obliged to acquiesce in a limitation of his right to grant pensions. Henceforward the amount disbursed in pensions

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nor were all the members of the Cabinet always consulted on matters of grave importance. See *Journal of Lady Holland*, March 8, 1807 (vol. ii. p. 211): "There is an expedition to be undertaken, which, on account of Erskine's extraordinary imprudence in talking, is to be kept a secret from the Cabinet and only known to a few." For the constitution of the Cabinet at this period see the interesting details in Lord Holland's *Memoirs of the Whig Party*, vol. ii. pp. 84, 87, 88. This distinction between an "inner" and an "outer Cabinet" was even more strictly maintained in the 18th century. See Anson, *Law and Custom of the Constitution*, 2nd ed., vol. ii. pp. 100 sqq.

<sup>1</sup> See 1 Geo. III, cap. 1.

might not exceed a definite figure, separately fixed for England, Scotland and Ireland.<sup>1</sup> Impeachment was a quasi-judicial procedure employed by Parliament to secure the responsibility of the executive officials. In 1791 the Crown lost the power to stop proceedings by dissolving Parliament.<sup>2</sup> On two occasions, in 1788 and in 1811, when the King had become incapable of government, Parliament refused to proceed by way of address, and to invite the Prince of Wales to assume the Regency by right of birth. On both occasions Parliament took upon itself to nominate, by a special Act, the head of the executive and to define the limits of his authority, and on both occasions it was the Whigs who supported the hereditary principle, because they favoured the claims of the Prince of Wales and because the Prince was considered their leader. It was the Tories who secured, in opposition to the Whigs, the triumph of the old Whig doctrine of the supremacy of Parliament.

The Whig opposition denounced also the management of the Government departments. Here, certainly, they had good cause for complaint: the abuses were scandalous. But these abuses dated from the period of Whig rule, and the only complaint that could fairly be brought against the Tory Ministries was that they had failed to abolish them when they succeeded to power. And these abuses, it might be argued, far from favouring the despotic aspirations of the Crown, were, on the contrary, calculated to perpetuate the supremacy in the executive of the Whig aristocracy.

<sup>1</sup> See 22 Geo. II, cap. 82; 33 Geo. III, cap. 34 (Ireland); 50 Geo. III, cap. 111; May, *Constitutional History*, vol. i. pp. 215, 217.

<sup>2</sup> 26 Geo. III, cap. 96; 45 Geo. III, cap. 125; Pellew, *Life of Lord Sidmouth*, vol. i. p. 81; Adolphus, *British Empire*, vol. i. p. 291; *Parl. Hist.*, vol. xxix. pp. 523, 543; Anson, *Law and Custom of the Constitution*, vol. i. pp. 365-366. Nevertheless, after the impeachment of Lord Melville (1804), impeachment fell into disuse; "laid aside," writes Townsend (*Memoirs of the House of Commons*, vol. ii. p. 356), "like the battle-axe of Richard Cœur de Lion, too heavy for modern arms to wield with effect; or, like the sword of the Black Prince or a relic in the Sanctuary, rather an object of reverence than of terror, more honourable in its rust than in its edge. May it long continue in abeyance, like another valued privilege of the Commons—their power of refusing the supplies—undisturbed as the royal veto." The age of contests between the Crown and Parliament had gone by; new problems of a different character were now demanding solution.

## POLITICAL INSTITUTIONS

A body of officials, drawn from the middle or lower classes and poorly paid, would be animated by feelings of jealousy towards the aristocracy. On such officials a monarch, greedy of power, could rely for support in a struggle against the arrogant pretensions of the heads of the great families. But it was to satisfy the claims of this aristocracy that those offices of wealth and influence, those sinecures of which we have spoken, had been instituted.<sup>1</sup> And these high officials, securely entrenched in their bureaus, bid the Crown defiance. The English aristocracy had laboured, and with success, to establish the rule that the permanent civil servants were irremovable.<sup>2</sup> Every office conferred for life was deemed, by the lawyers and by Parliament, the freehold of its occupant; therefore no Government post could be taken from its occupant or suppressed, nor even could its character be changed without violating the right of private property.<sup>3</sup>

<sup>1</sup> Even the reformers recognized this, and admitted that the sinecures, if properly distributed, would at least serve to maintain the position of the old aristocracy. "They now serve," writes Cobbett (*Political Register*, March 1, 1806), "or ought to serve, the purpose of rewarding public services—services well known and universally acknowledged; and, which is not less essential to the maintenance of the monarchy and the welfare of the State, for the purpose of upholding and cherishing those amongst the ancient nobility and gentry, who otherwise might fall into a state that would inevitably bring disgrace upon rank, and would, thereby, leave us no aristocracy but that of wealth, ten thousand times more grinding and insolent than the lords of the worst of feudal times." Edmund Burke, twenty-five years earlier, had used similar language in his speech on Economical Reform (*Works*, vol. ii. pp. 238-239): "When we look over this Exchequer list, we find it filled with the descendants of the Walpoles, of the Pelhams, of the Townshends—names to whom the country owes its liberties, and to whom His Majesty owes his crown. May such fountains never be dried up! May they ever flow with their original purity, and refresh and fructify the commonwealth for ages." Accordingly, while demanding a reduction of the salaries attached to these valuable sinecures, he did not demand their total suppression.

<sup>2</sup> When in 1810 the King was seized with madness, and confusion reigned in the Cabinet, Lord Grenville, one of the leaders of the Opposition, took advantage of his position as Auditor of the Exchequer to embarrass the Government by opposing his veto to every issue of money to the Treasury (*Court of England under the Prince Regent*, vol. i. p. 15).

<sup>3</sup> Burke, *Speech on Economical Reform*, 1780 (*Works*, vol. iii. p. 308). The Tellerships of the Exchequer had been reformed in

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

It was even an established custom to grant certain posts in reversion.<sup>1</sup> The patent which conferred the post provided that on the holder's death it should revert to his son or to some other person specified. Sometimes the patent even nominated three successive holders of the same office. Thus was constituted in the Government departments of England a species of mortmain. We must add that by 1813 the higher officials had lost their former right to sell the subordinate posts. The result of all this was that even in the departments where, as head of the executive, we might have expected to find him absolute, King George was no Sovereign, but merely an overlord. In many respects the bureaucracy of London presented the characteristics of an hereditary feudalism.<sup>2</sup>

"It is our purpose," contended the Opposition speakers, "by a reform of the administration, to prevent the establishment in our midst of a powerful bureaucracy under the control of a despotic monarch." "Your contention is absurd," replied the supporters of the Government. "These very abuses, at which you exclaim, effectively limit the Royal Prerogative and protect the aristocracy against the Crown." We cannot be surprised that public opinion watched with an ever-increasing scepticism a dispute in which both parties were obviously fighting for their own interests. When in

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1784 and the emoluments reduced to a fixed salary of £4,000. But the actual holders were left in undisturbed enjoyment of the enormous emoluments to which they had been entitled before the reform. The Marquis of Buckingham, one of the Tellers unaffected by the reform, did not die till 1813 and it was only at his own request that Lord Camden's Tellership could be reformed in 1819 (59 Geo. III, cap. 43).

<sup>1</sup> *Or for Joint Lives with Benefit of Survivorship.* In 1782 a patent was issued to confer the post of Clerk of the Parliament after the death of Mr. Ashley Cowper, then eighty years of age, on Samuel Strut and George Rose in reversion. George Rose succeeded to the post in 1795, and it brought him an annual income of £3,278. He secured the reversion of it for his eldest son. (*Diaries . . . of George Rose*, vol. i. pp. 25 sqq. Cobbett, *Paper against Gold*, Letter 27, July 20, 1811; *Political Register*, vol. xx. p. 69.)

<sup>2</sup> Miss Edgeworth, *Patronage*, chap. ix: "Thus the forms of homage and the rights of vassalage are altered, the competition for favour having succeeded to the dependence for protection; the feudal lord of ancient times could ill compete in power with the influence of the modern politica l patron."

## POLITICAL INSTITUTIONS

1784 the issue had been whether the East India patronage should be entrusted to a parliamentary commission or to a Minister nominated by the Crown, the country had plainly declared in favour of the King and against the great parliamentary families. Quite recently, in 1812, when the Whigs were about to take office, they had attempted to prevent the Prince Regent from choosing the officers of his household without consulting the Cabinet. The attempt failed; victory rested with the Regent, and the leaders of the Opposition realized, to their disgust, that public opinion did not support them.<sup>1</sup> The nation's one desire was the reform of abuses, whoever might benefit by them, and the middle classes were delighted that, in part owing to the pressure of the new democratic ideas, in part to the exigencies of party warfare, this reform had already begun.

### *Administrative Reform.*

Reform dated from the moment that George III showed his intention to exploit the old abuses for his own ends. The Whigs took alarm, and attempted to become once more the champions of popular rights. Edmund Burke, the great Whig orator, opened, in 1780, the campaign in favour of "economical reform,"<sup>2</sup> or, as we should term it, of administrative reform. During five years of successive political crises the question of "economical reform" was the burden

<sup>1</sup> See Thomas Grenville's letter to the Marquis of Buckingham, June 10, 1812 (*Court of England under the Prince Regent*, vol. i. p. 379). On this matter cf. *ibid.*, vol. i. pp. 355-357: Minute of a conversation between Lords Grey and Grenville and Lord Moira, June 6, 1812; H. of C., January 16, January 27, 1812; H. of L., February 7, 1812 (*Parl. Deb.*, vol. xxi. pp. 151 sqq., 331 sqq., 689 sqq.).

<sup>2</sup> *Speech on Economical Reform*, 1780 (*Works*, vol. iii. pp. 229 sqq.). The reader will find a general view of the reform movement, together with an appreciation of the work accomplished—an appreciation inspired naturally enough by Governmental optimism—in the speech delivered by George Rose in the House of Commons on June 2, 1809, and published by the speaker as a pamphlet entitled *Observations respecting the Public Expenditure and the Influence of the Crown*, 1810. Bentham published a reply, his *Defence of Economy against the Right Hon. Edmund Burke* (*Works*, vol. v. pp. 278 sqq.).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

of all the important debates. When the Whigs—Fox and his friends—were in opposition they loudly demanded reform from the King's friends. If they succeeded to an interval of office they were at once reproached by their opponents for slackness and hesitation in carrying out their programme. Two important commissions<sup>1</sup> were appointed, and issued a series of reports which reviewed all the Government departments, criticizing abuses and suggesting reforms. The length of time was reduced during which the Government funds would be at the disposal of the heads of departments, who moreover lost, in certain cases, the right to the usufruct of these funds. In some cases a system of fixed salaries was substituted for that of remuneration by "fees." The number of useless posts was reduced, also of posts where the work was done by a deputy. Treasury, Exchequer, Customs, Excise, Admiralty, all were reformed.<sup>2</sup> Pitt, the Tory Premier, wished to contrast his policy of active reform with the inertia of the Whig oligarchy in its days of power.

There followed the French Revolution and the Napoleonic War. Pitt and Burke were reconciled and belonged henceforward to the same party, the party formed to defend all the old traditions, even all the old abuses, against Jacobin

<sup>1</sup> 20 Geo. III, cap. 54: "For appointing and enabling Commissioners to examine, take and state the public accounts of the Kingdom; and to report what balances are in the hands of accountants which may be applied to the public service, and what defects there are in the present mode of receiving, collecting, issuing, and accounting for public money; and in what more expeditious and effectual and less expensive manner the said services can in future be regulated and carried on for the benefit of the public." 25 Geo. III, cap. 19: "For appointing Commissioners to inquire into the fees, gratuities, perquisites, and emoluments which are or lately have been received in the several public offices to be therein mentioned; to examine into any abuses which may exist in the same; and to report such observations as shall occur to them for the better concluding and managing the business transacted in the said offices." See H. of C., February 17, March 8, 1785 (*Parliamentary Register*, vol. xvii, pp. 180 sqq., 344 sqq.).

<sup>2</sup> 22 Geo. III, cap. 75 (offices in the Plantations); 22 Geo. III, cap. 81, and 23 Geo. III, cap. 82 (Paymaster of the Forces); 22 Geo. III, cap. 82 (Civil list); 23 Geo. III, cap. 82 (Exchequer); 24 Geo. III, cap. 38 (Tax Office: Exchequer); 25 Geo. III, cap. 31 (Treasurery of the Navy); 25 Geo. III, cap. 52 (for better auditing public accounts); 27 Geo. III, cap. 13 (Customs and Excise); 29 Geo. III, cap. 64 (Customs).

## POLITICAL INSTITUTIONS

propaganda. And the war led to lavish expenditure. Instead of economies in the offices already existing, new offices were brought into existence, a Secretaryship of State for War, a Board of Artillery.<sup>1</sup> But five years had not elapsed before the agitation for reform began once more. When Pitt asked Parliament in 1797 for the nomination of a commission of inquiry into the public finances, Parliament exacted an extension of its scope. Like the commission appointed fifteen years earlier, it was to review all the Government departments and to take into consideration the reforms already effected and those which were still necessary.<sup>2</sup> After the Peace of Amiens and the resumption of hostilities, as the Government lost prestige, the reform movement became more active. Lord St. Vincent reformed the administration of the Navy,<sup>3</sup> the Duke of York reformed the War Office.<sup>4</sup>

<sup>1</sup> The Treasury reform begun in 1782 was completed in 1793. The Reports were issued in 1789, 1792 and 1793. In consequence of two reports issued by the Commissioners of the Customs appointed in 1789, a Bill for the abolition of the fees paid to the "Outdoor Officers" of the Customs was prepared in 1792. But there the matter rested. It is remarkable that the reform was suspended coincidently with the outbreak of hostilities.

<sup>2</sup> H. of C., March 13, 1797 (*Parliamentary Register*, vol. lxiv. pp. 27 sqq.). The Reform Bills passed in consequence of the Commission were 38 Geo. III, cap. 89 (Abolition of Salt Board, its work was transferred to the Excise); 38 Geo. III, cap. 86 (Abolition of sinecures in the Customs); 39 Geo. III, cap. 83 (Abolition of the auditors of the Land Revenue in England and Wales).

<sup>3</sup> 93 Geo. III, cap. 16: "For appointing Commissioners to inquire and examine into any irregularities, frauds or abuses which are or have been practised by persons employed in the several naval departments therein mentioned, and in the business of Prize Agency; to report such observations as shall occur to them, for preventing such irregularities, frauds and abuses—for the better conducting and managing the business of the said departments and of Prize Agency in future." Continued 45 Geo. III, cap. 46, until the end of the next session of Parliament.

<sup>4</sup> 45 Geo. III, cap. 47: "To appoint Commissioners to inquire and examine into the public expenditure in the conduct of public business, in the military departments there mentioned; and to report such observations as shall occur to them for correcting or preventing any abuses and irregularities and for the better conducting and managing the business of the said departments; to continue in force for two years, and from thence until the expiration of six weeks after the commencement of the then next session of Parliament."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Lord Melville, the First Lord of the Admiralty, was accused of speculating for his personal profit with the funds temporarily entrusted to his charge. This brought up the whole question of the subordinate treasuries, and in 1806 a Coalition Ministry, containing the Whig leaders, settled the matter by an Act which embraced all the public departments.<sup>1</sup> A scandal made public in 1809 led to the passage of a Bill prohibiting the sale of Government offices.<sup>2</sup> In 1812 a Bill for the abolition of sinecures was introduced. This Bill provided for the employment of the money thus saved to establish a pension fund for retiring officials. The Bill was twice rejected by the Lords, but in the course of the debates an important sinecure, the Paymastership of Widows' Pensions, was suddenly abolished. This was a deliberate insult offered to the Prince of Wales, whose intimate friend, Lord MacMahon, was Paymaster.<sup>3</sup> The custom of granting administrative posts in reversion fell into disuse. The Cabinet of 1806 boasted that it had made no grants of this kind,<sup>4</sup> and although in 1815 the practice had not yet been definitely abolished, it had been suspended for the previous eight years by a series of temporary Acts.<sup>5</sup>

<sup>1</sup> 46 Geo. III, cap. 141. See *Annual Register*, 1806, pp. 78 sqq. To this general Act we must add a number of special Acts dealing with the reorganization of the system of accounts in the Government offices. Pitt's Cabinet initiated the movement by the Act, 45 Geo. III, cap. 58, dealing with the Paymastership-General.

<sup>2</sup> 49 Geo. III, cap. 126.

<sup>3</sup> On the question of sinecures see H. of C., February 10, July 7, 1807; February 5, May 31, 1810; January 9, March 24, May 4, June 15, 1812; February 12, 1813; H. of L., May 18, 1813 (*Parl. Deb.*, vol. viii. p. 703, vol. ix. p. 745, vol. xv. p. 311, vol. xvii. p. 227, vol. xxi. p. 112, vol. xxii. pp. 162, 1159, vol. xxiii. p. 468, vol. xxiv. p. 506, vol. xxvi. p. 220). When on May 6, 1812, Fremantle informed the Marquis of Buckingham of the Government defeat on the Sinecure Offices Bill, he added, "There never was a Bill so full of absurdity and impracticability; but the object of it was one which the House of Commons are now wild upon" (*Court of England under the Prince Regent*, vol. i. p. 288).

<sup>4</sup> H. of C., February 10, 1807, Lord Henry Petty's Speech (*Parl. Deb.*, vol. viii. p. 703).

<sup>5</sup> 48 Geo. III, cap. 50; 50 Geo. III, cap. 88; 51 Geo. III, cap. 1 (Regency Sec. 9); 52 Geo. III, cap. 40. See the Parliamentary Debates: H. of L., August 4, 1807; H. of C., January 25, April 11, 1808, April 24, 1809, January 31, 1810 (a motion by Bankes in favour of an Office in Reversion Bill was adopted by acclamation).

## POLITICAL INSTITUTIONS

Historians are too much in the habit of regarding the *ancien régime* in England as a solid block which did not begin to crumble till about 1832. In reality a great reform movement began about 1780, and although this movement undoubtedly died down during the anti-Jacobin reaction, during the last years of the war it was once more in full swing. To this fact is due the radical difficulty which faces us when we seek to define exactly the state of British society during the early years of the 19th century. Not only was that society highly complex, it was also in a state of flux. Take, for instance, the administration and its abuses. The Tories were undoubtedly right in insisting that the system owed its origin and character to the Whigs, and had been constructed to reduce to a minimum the authority of the head of the executive over the agents of the executive. Sometimes indeed, for instance, during the early years of William Pitt's Ministry, the Tories had even played the part of reformers. But by 1815 they were pledged to the defence of all the abuses employed by the eighteenth-century Whigs to secure their power, for that power was now in Tory hands. It was the leaders of the Whig Opposition who, to storm the citadel occupied by the Regent's advisers, were battering to pieces the old edifice of Whig aristocracy.

## THE JUDICATURE. JUDGES AND BARRISTERS

*Lawyers: Solicitors. Barristers. Judges.*

Montesquieu distinguished between the legislature and the executive. He made a further distinction between "the executive power in matters pertaining to international law,"

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An amendment by the Chancellor of the Exchequer received only two votes, one of these being the vote of the Chancellor himself), April 5, 1811, January 28, February 7, 1812; H. of L., February 17, 1812; H. of C., April 5, 1812; H. of L., March 24, 1812, July 8, 1814; H. of C., July 19, 1814; H. of L., June 12, 1815. (*Parl. Deb.*, vol. ix. p. 1044, vol. x. p. 96, vol. xi. p. 18, vol. xiv. p. 191, vol. xv. p. 251, vol. xix. p. 712, vol. xxi. pp. 381, 691, 825, vol. xxii. p. 151, vol. xxviii. pp. 632, 791, vol. xxxi. p. 716.)

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

in short, the executive proper, and the "the executive power in matters relative to the civil law."<sup>1</sup> In other words, if the principle of the separation of powers is to be completely applied there must be a separation between the judicature and the two other powers. On this point Blackstone followed Montesquieu, but was careful to modify a doctrine no doubt too republican for his liking. According to Montesquieu, if the independence of the Bench is to be duly secured, the judges must be taken from the mass of the people, they must be partially liable to challenge, and must be the peers of the accused. But these independent judges which Montesquieu regarded as essential to a good constitution and which he did in fact find in England, were not the judges but the juries. We find nothing of all this in Blackstone, who, in the passage where he defines the nature of judicial independence, makes no allusion whatever to the jury system. We will therefore do well to neglect the jury, provisionally at least, and be content to inquire to what extent the English judicial system did in reality carry out the theory of the separation of powers, as we find it laid down by Blackstone. "Indeed," writes Blackstone, "that the absolute power claimed and exercised in a neighbouring nation is more tolerable than that of the Eastern empires, is in great measure owing to their having vested the judicial power in their Parliaments, a body separate and distinct from both the legislative and executive: and if ever that nation recovers its former liberty, it will owe it to the efforts of those assemblies."<sup>2</sup> But this very institution which in France embodied so perfectly the principle of the separation of powers was lacking in England. In England the Bar and the Bench did not constitute a caste. A legal career was open to the ambition and the talents of the poorest, and it led to the very highest positions in society. On the lowest rung of this ladder we find the attorneys, or, to employ the more dignified term now coming into general use, the solicitors.<sup>3</sup> One of

<sup>1</sup> *Esprit des Lois*, Book II, chap. vi.

<sup>2</sup> 1 *Comm.* 269.

<sup>3</sup> Miss Edgeworth, *Patronage*, chap. xxii: "Solicitor Babington, by the by, pray tell Rosamund in answer to her question whether there is an honest attorney, that there are no such things as attorneys now in England—they are all turned into solicitors and agents, just as every *shop* is become a *warehouse*, and every *service*

## POLITICAL INSTITUTIONS

the sources of their prosperity was the numerous services which they were in a position to render to the great landed proprietors. Did a landowner find the personal management of his farms irksome and difficult? He made a solicitor his agent and put all business in his hands. Or did he find a difficulty in performing his duties as a magistrate? He made a solicitor his salaried clerk, who prompted him and did all the real work. Or again, was he moved by political ambitions to stand for a borough or a county? A solicitor was indispensable to watch over his interests, take part in local intrigues and distribute money in his client's name. Thus the solicitors grew wealthy while the great families, whose agents they were, spending recklessly, were impoverished, sometimes even ruined.<sup>1</sup> But, drawn from the people the solicitors continued to be of the people. They were a body without prestige, a body separated from the barristers by a social abyss. The latter, to be sure, could not dispense with the services of the former. But for that very reason professional etiquette forbade them ever to do anything that would have the appearance of courting the favour of solicitors or of paying court to them for briefs. And apparently with the 19th century the rules of the Bar became even stricter on this point than they had been in the 18th. Lord Campbell informs us that in the 18th century Pratt remained a long while briefless because he would not invite solicitors to his dinner parties nor dance with their daughters; and that Wedderburn, on the other hand, built up a large body of clients by canvassing the City solicitors for briefs. But such practices were a thing of the past, and Campbell

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a *situation.*" Number of solicitors in 1800 in London, 1,800; 3,500 in the provinces (Gneist, *Verfassungs und Verwaltungsrecht*, vol. i. p. 509).

<sup>1</sup> See the complaints of the first Marquis of Lansdowne (Fitz-maurice, *Life of Lord Shelburne*, vol. ii. pp. 345-6): ". . . Of all the follies, the greatest is that which formerly was practised and is still continued in some great families, that of having some considerable lawyer or some eminent man of business at a considerable salary to audit your accounts. There is a family whose fortune was entirely made by the father's auditing the accounts of different estates, which many of the owners were infinitely more capable of auditing."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

remarks that professional snobbery had now been pushed to absurdity.<sup>1</sup>

Active, wealthy, intelligent, but without social standing, the solicitors had every inducement to become a discontented class in revolt against a system which condemned them to a position of social inferiority. John Frost, one of the leading "Jacobin" agitators in 1794, was a solicitor. About the same period Burke made it a reproach against the new democracies of France and America that they were governed by solicitors. It would, nevertheless, be a mistake to suppose that the established order of society was ever in any danger from the grievances of the English solicitors; for they were comforted by the knowledge that it was in their power to win for their children the standing which they could never obtain for themselves. A solicitor's son, called to the Bar, possessed the most favourable opening for a brilliant career. His father recommended him both to his clients and to his fellow solicitors. He had learnt his profession in his father's office, and his fellow students, when in due course they became solicitors, brought their cases to him. The three most eminent Lord Chancellors in the 18th century were the sons of solicitors, and of the three, two had not even been to the University. After 1792 the prestige attaching to the military profession was much raised by the constant wars, and, moreover, the increase in the forces made a great many new openings in the Army for the younger members of the aristocracy. This rendered access to the Bar even easier than before. And the moment a solicitor's son began to practise at the Bar he felt himself a member of the governing class and shared its snobbery.<sup>2</sup>

<sup>1</sup> Campbell, *Lives of the Chancellors*, vol. v. p. 232, vol. vi. p. 56.

<sup>2</sup> H. of C., March 23, 1810 (Stephen's Speech): "That profession was in a pre-eminent manner the patrimony of the people at large. . . . In other professions, as the Church or Army, hereditary claims or fortune might facilitate preferment; but at the Bar, a profession which was a much more frequent road to rank and fortune, no such extrinsic advantages were of any avail. On the contrary, it was proverbial, that a necessity arising from poverty in the early part of life was almost the only source of splendid success at the Bar" (*Parl. Deb.*, vol. xvi. p. 375). See, on the other hand, Miss Austen, *Sense and Sensibility*, chap. 19. ". . . The law was

## POLITICAL INSTITUTIONS

The four great Inns at the City gates, where swarmed the entire population of lawyers, were in fact four large aristocratic clubs, recruited by free cooptation. In this district between the City of London and the Borough of Westminster, the English kings had founded in the 13th century an institution intended to provide young men of good family with a school of jurisprudence. Soon, however, those for whose benefit the Inns of Court had been established forsook them and went to Oxford or Cambridge to complete their education. Nevertheless, it still remained fashionable, the gentlemanly thing, to read for the Bar. Sons of landed gentlemen, of officers in the Army, of merchants, of solicitors, the London barristers were well aware that the vote which had conferred upon them the privileges of the Bar had also admitted them into good society. They met at definite periods as a disciplinary court, a Bench, whose function it was to secure the observance of the rules of the corporation. In 1807 the Benchers of Lincoln's Inn had decided that no one who had received payment for writing in the newspapers might henceforth be called to the Bar. To procure the abolition of this rule required all the influence of the Press, a campaign of three years and a long debate in Parliament, in which all the lawyers present dissociated themselves from the action of their senate.<sup>1</sup>

Since barristers were men of the world who prided themselves on having nothing of the theorist or the pedant about them, they took care that the Inns of Court should bear no resemblance to Universities provided with an organized teaching staff. The old aristocratic England was not enamoured of learning. In 1799 it required all the energy of the Chancellor, Lord Loughborough, to obtain from the Benchers of Lincoln's Inn permission for Mackintosh to

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allowed to be genteel enough; many young men who had chambers in the Temple made a very good appearance in the first circles, and drove about town in very knowing gigs." The number of barristers in 1810 = 598, in 1820 = 880, in 1821 = 820 (Gneist, *Verfassungs und Verwaltungsrecht*, vol. i. p. 503).

<sup>1</sup> See the Debates, H. of C., March 23 and 26, 1810 (*Parl. Deb.*, vol. xvi. pp. 27, 45). Cf. *Diary of Lord Colchester*, March 23, 1810, vol. ii. p. 240.

deliver a course of lectures on the law of nature.<sup>1</sup> His course lasted two years. On its conclusion the old order was restored, the experiment was never repeated; the traditional contempt for scientific principles, the established routine, resumed their sway. To be present each term at a fixed number of dinners in hall formed the only obligation imposed by the rules. The students dined at the Lower Table. At the High Table the Benchers enjoyed a better-cooked dinner, which they had earned by a two years' apprenticeship at the Lower Table. The food was good, the drinking heavy. If a student wanted to work, it was for him to procure the means of instruction. He could become a clerk in a solicitor's office or, perhaps, attach himself to one of the barristers of inferior rank, specialists in matters of procedure and intermediate between barristers and solicitors, who were called special pleaders and who for the last twenty years had been earning a livelihood by coaching pupils for the Bar.

Then came the time to practise. The wealthiest and most fashionable of the young barristers spent the season at Bath, and during the circuits, when they followed the Westminster judges into the provinces on their yearly round of assizes, they made quite a stir by their fashionable style of living. And to maintain his position the poor barrister was obliged, as far as possible, to imitate his wealthier confrères. So grievous is the yoke of snobbery. In London he must keep a clerk and occupy chambers where solicitors and their clients came to consult him. This entailed a rent of £40 to £60 a year. During the two circuits in which he took part every year he was obliged to spend over £80 in the course of ten weeks. The horse on which he rode from town to town was a costly item, and it was considered beneath the dignity of the profession to pass the night at a common inn.<sup>2</sup> The first years were often years of great hardship. Good friends, however, or the lucky chance of a successful case, might make the reputation of our youthful barrister. Henceforth he will leave to others the inferior business of the profession, such as procedure, the drawing up of notaries' documents or the coaching of pupils, and from a junior barrister will become a

<sup>1</sup> Campbell, *Lives of the Chancellors*, vol. vi. pp. 288-290.

<sup>2</sup> For the expenses of a London barrister see Cottu, *Administration de la Justice Criminelle en Angleterre*, pp. 145-146.

## POLITICAL INSTITUTIONS

leader. In future all his work will consist in conducting important cases and in the practice of oratory. He will become Serjeant-at-Law and King's Counsel, and exchange his woollen gown for silk. Quite a large number of barristers made £4,000 a year. Sir Samuel Romilly received from £15,000 to £16,000 a year. Nothing was beyond the reach of a successful barrister; there was no office or title to which he might not aspire.<sup>1</sup>

Parliament was open to him. For parliamentary government is essentially government by oratory. But neither the country gentlemen who composed the great mass of the Tory Party nor the heads of "the great Revolution families" who led the Whigs were necessarily orators. They therefore called the barristers to their assistance, found them seats, and offered them later a position in their Cabinets as the Crown lawyers, Attorney-General and Solicitor-General. These were extremely lucrative posts, posts moreover which not only allowed their holders to continue to accept private briefs, but also, by the prestige which they conferred, sent them a large influx of business.

The other positions in the Cabinet brought in less money and occupied more time. But there were the sinecures and grants in reversion to secure pecuniary compensation to those who accepted such offices and to their immediate heirs. The "black squadron"<sup>2</sup> of lawyers acquired an ever-increasing influence in the councils of the Tory Party, from the day when the barrister William Pitt reorganized it after the American War till the moment when the barrister Addington found himself at the head of a Cabinet in which barristers abounded. To be sure, they were far from popular. An Opposition orator denounced "this weak and idiotic administration," not one of whose members "had landed or indeed any other kind of property, and which was merely

<sup>1</sup> Charles Abbott refused a judgeship in 1808. As a barrister he was making £8,000 a year and would have lost too much by joining the Bench (Townshend, *Lives of Eminent Judges*, vol. ii. p. 245).

<sup>2</sup> See Sir John Scott to his brother, 1790 (Campbell, *Lives of the Chancellors*, vol. vii. p. 103). In a list of the Members of the House of Commons in 1815, forty-seven names were those of lawyers. We must not, however, forget that a certain number of those put down as lawyers were young men of good family who had been called to the Bar but did not practise.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

a parcel of second-rate lawyers and needy adventurers.”<sup>1</sup> “The present ministers,” Horner wrote scornfully, “are almost all lawyers, bred upon the lowest benches of the forum.”<sup>2</sup> But after all Horner was himself a lawyer, and it was not only on the Tory side of the House that the brunt of the debate was borne by lawyers. Among the Whig lawyers in Parliament were Horner himself, Romilly the leading light of the London Bar, and Brougham the great man from Edinburgh.<sup>3</sup> The demagogue, Cobbett, who attacked both parties, invited in 1812 the electors of Bristol to vote against the Whig Romilly, simply because he was a barrister. “We have been brought,” he wrote, “to our present miserable state by a lawyer-like policy defended in lawyer-like debates.”<sup>4</sup>

A barrister could also be made a judge of one of the four higher courts of Westminster. In all there were twelve judgeships between the three Common Law courts—the King’s Bench, Common Pleas and Exchequer. Each of these courts had a president, the Chief Justice or Chief Baron and three “Puisne” judges. The fourth court, known as the Court of Equity, possessed one judge, the Lord Chancellor,

<sup>1</sup> H. of C., November 29, 1810 (*Parl. Deb.*, vol. xviii. p. 107)—Speech of General Mathew, and January 2, 1811 (*Parl. Deb.*, vol. xviii. p. 660)—Sheridan’s speech. Sheridan compares the Ministry to a new Directory. Only a Carnot, he said, was wanting to make the resemblance perfect. “There is, however, one similitude—that at the head of the French Directory, as well as now of our own, there was a lawyer of the name of Reubel.” Cf. Ward, *Letters to Ivy*, October 1809 (pp. 85–6). “Lord Liverpool takes the Department of War and Colonies, Richard Ryder succeeds him as Home Secretary. Quaere. Will the duties of that high office allow him leisure to audit my Lord Stafford’s accounts, which he has hitherto done and received for it an annual douceur of £2,000?”

<sup>2</sup> F. Horner to J. A. Murray, May 22, 1810 (*Correspondence*, vol. ii. p. 43).

<sup>3</sup> In 1818 Creevey told Wellington that he would like to see Romilly Leader of the Opposition in the Commons. Wellington replied: “The House of Commons never likes lawyers.” “So I” (Creevey) “said that was true generally, and justly so, but that poor Horner had been an exception, and so was Romilly; that they were no ordinary, artificial, skirmishing lawyers, speaking from briefs, but that they conveyed to the House, in addition to their talents, the impression of their being really sincere, honest men (*Creevey Papers*, vol. i. p. 278).

<sup>4</sup> *Political Register*, July 4, 1812 (vol. xxii. p. 9).

## POLITICAL INSTITUTIONS

who was assisted by a Master of the Rolls and also, since 1813, by a Vice-Chancellor. The number of these posts was obviously very small, but on that very account the greater was the prestige attaching to them. It might happen that the judges were men of no birth, hampered by unsuitable wives, former mistresses or uneducated and unpolished women of the lower middle class. Nevertheless, they were treated with respect by the noblest families of the land, took rank with the bishops, and were received in state in the provinces. The Lord Chancellor held a position apart from the other judges, for he was a Cabinet Minister. The importance of this office had increased since Lord Eldon held it. An intransigent Tory, a great judge, an unwearied intriguer, he had succeeded, after having been the political adviser and friend of George III, in gaining the intimate friendship of the Prince Regent. It seemed as if the office of Lord Chancellor had become irremovable, and the chief judge of the kingdom was also a perpetual vicar of the Government.

### *The Relation of the Judicature to the Other Powers.*

With a judiciary thus constituted what became of the classic theory of the division of powers? If the judicature and the legislature were to be kept separate, a judge should have been incapable of sitting in the House of Commons; but though this was certainly the custom, it was no absolute rule. There was an entire class of judges, namely the Welsh, to whom it did not apply at all. These judges were all eligible to a seat in the Commons. Consequently they were always, or nearly always, chosen from the Members of the House, and their nomination was always a reward for political services. Three years before our date the nomination to a judgeship, during a general election, of William Kenrick, the proprietor of the Borough of Bletchingley, had caused a public scandal.<sup>1</sup> The same principle also required that

<sup>1</sup> H. of C., June 12, 1809 (Romilly's speech): ". . . that for the last thirty years the Welsh judges, with only three exceptions, had been chosen from among gentlemen of the profession who were Members of that House (Parl. Deb., vol. xiv. p. 989)." F. Burton, one of the Welsh judges, had, on March 8, 1809, vigorously defended the Duke of York. The Chancellor of the Exchequer ascribed the

no judge could ever be a Member of the Upper House. But the Chancellor, by the very fact of his appointment, entered the House of Lords, and the posts of Chief Justice and Chief Baron also brought with them a peerage. George III established the custom that the judges of the higher courts should always be knighted on promotion to the Bench; and he could advance later to the peerage those among the judges whom he considered sufficiently rich to support the position. In the lifetime of George III, thirteen lawyers entered the House of Lords through a seat on the Bench, three others after previous membership of the Lower House where they had taken an active part in politics. These new peers were of widely different origin. Lord Erskine was a son of the Earl of Buchan, Lord Ellenborough of a Bishop of Carlisle. But Lord Eldon, on the other hand, was the son of an obscure merchant, who had made a fortune out of the Newcastle collieries, and Charles Abbott, who was soon to receive a peerage, was the son of a Canterbury wigmaker. In all sixteen lawyers, practising or retired, had been raised to the peerage, a number equal to that of the ennobled sailors and soldiers.

Extenuating circumstances were pleaded on behalf of this confusion of powers. It was maintained that these Law Lords, though adherents of the rival parties, had learnt to work together in the impartial discharge of their judicial functions. But, if that were the case, the customs of the country, for reasons which remain to be investigated, had effected what its institutions would have failed to effect. Nor was the House of Lords only a legislative assembly;

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violent campaign carried on by the Opposition against the privilege of the Welsh judges to the ill-feeling they cherished against Burton. See June 1, 1809: "As to the proposition of excluding the Welsh judges from the House of Commons, if such a regulation were at present adopted it would appear to be pointed at an individual who had always been most zealous in the discharge of his public duties" (*Parl. Deb.*, vol. xiv. p. 857). For the nomination of Kenrick see *Morning Chronicle*, October 31, 1812: "The late advancement of a member of the Household, the Clerk of the Kitchen, but the proprietor of the Borough of Bletchingley, to a Welsh judgeship shows that there is nothing so sacred in the Constitution which Ministers would not sacrifice to augment their numbers."

## POLITICAL INSTITUTIONS

it was also a Court of Justice. It heard appeals from all the higher courts of England, Scotland and Ireland. For the trial of Peers it was a criminal court both of first and last instance. It was certainly the custom that the great body of Peers abstained from taking part in debate whenever the House was discharging its judicial functions, and left the conduct of business to those of their body who were also professional judges. But this was after all no more than a custom—a custom, moreover, which was only observed when the House of Lords sat as a Court of Appeal. When the Peers tried a fellow Peer on a criminal charge all the Peers acted as judges. In short, the British Constitution allowed a judge to exercise, in addition to his judicial functions, the functions of a legislator. It allowed a legislator to exercise, in addition to his legislative functions, the functions of a judge. And to these two instances of a confusion of powers we must add yet a third. A judge was permitted, as we shall see, in the very exercise of his judicial functions, to be in the strictest sense a legislator.

"The scope of judgments," wrote Montesquieu, "should be limited so rigidly that they can never amount to more than an exact statement of the law. If they might be an expression of the judge's private opinion, the members of society would live in ignorance of the exact nature of the obligations binding upon them." In other words, Montesquieu would not permit the independence of the judicature to encroach upon the other powers. According to him, the function of the judge was to apply, secure from external pressure and from underhand influence, but with the most scrupulous precision, the laws enacted by the legislature. Here, then, we find another point on which Montesquieu's theory fails to correspond with his British model. In the 18th century the British Parliament legislated very little. As regards the English civil law, not only was there no code, but it would even be true to say that there were no laws. A respect for the common law—that is for the general principles of jurisprudence, drawn from the accumulated legal decisions of past centuries—formed the sole rule of English law that prevailed in the three courts of Common Pleas, King's Bench, and Exchequer. To be sure the Court of Chancery, unlike these three courts, judged in equity. But

what, then, was this equity? Was it the Roman law which was administered by this court in the distant past when it was an ecclesiastical court of Canon law? For such an interpretation of equity, an intention on the Chancellors' part to apply the Roman law would have been insufficient; the Chancellors must also have possessed a sufficient knowledge of that law to be capable of applying it. But this was not the case. Was equity, then, as others maintained, the common sense of the judge, who, neglecting precedents, took into consideration only the character of the case before him? If so, the decisions would be purely arbitrary, since the judge would professedly be emancipated from all control. Or was it, to follow a third interpretation, a system of legal principles, resembling in its main features the jurisprudence of the other courts, and equally empirical? So, on the whole, it was understood by Lord Eldon. After all, then, the four courts framed their decisions on the same general principles, and thus all worked together in the gradual development of English law.

Each trial was in practice a professional conference between the judges and the barristers on either side, all of whom were members of the same body, trained in the same school, and differing only in their rank in the legal hierarchy; and the object of this conference was to discover how the former decisions of the courts should be applied to the new case. Through these applications, the ancient law, the secret of the profession, was inevitably altered by those who claimed only to maintain its integrity. The periods during which certain great judges discharged their functions were epoch-making in the history of English law. Lord Eldon, for example, reformed both commercial law and the law of marriage. English civil law is judge-made law in the formation of which the legislature has had no share.

The confusion of the two powers is obvious. In fact, English statesmen of the 18th century were not concerned to separate the judiciary and the legislature. Their interest was confined to one problem alone—how best to secure the complete protection of both powers, the judicial and the legislative alike, against the encroachment of the executive. To understand how the British institutions effected a

## POLITICAL INSTITUTIONS

separation between the executive and the judicature we must return once more, not to Montesquieu, but to Blackstone, and examine how far Blackstone's teaching was realized in fact. According to Blackstone, the separation between the executive and the judicature consisted in the delegation by the kings of their judicial power "to the judges of their several courts." These judges, he continues, "are the grand depositaries of the fundamental laws of the kingdom, and have gained a known and stated jurisdiction, regulated by certain and established rules, which the Crown itself cannot now alter but by Act of Parliament."<sup>1</sup> Since the reign of William III they had been irremovable, holding their places no longer *durante bene placito* (during the King's pleasure), but *quamdiu se bene gesserit* (during good behaviour), and could only be removed by a joint address of both Houses.<sup>2</sup> Under the first two Georges the Crown still retained the right to deprive the judges on the accession of a new monarch; but when the Tory monarch, George III, ascended the throne, he yielded this remnant of the prerogative.<sup>3</sup> In this way, according to Blackstone, the independence of the judges was assured. But we must not forget that in their irremovability the position of the judges hardly differed from that of the other high officials, all of whom, in virtue of an unbroken practice, if not of a definite law, were coming to be considered irremovable. In England the judicature formed a branch of the executive, constituted for all intents and purposes like the other branches, and like them protected against any attempt at control by the nominal head of the executive.

The judges were appointed by the King through the Lord Chancellor and at his advice. We might, therefore, expect that the nominations of judges were always party nominations. As a matter of fact, certain traditional usages guaranteed in England the independence of the Bench, still suspect, despite judicial irremovability, and prevented the natural effects of the political institutions. Custom compelled an absolutely impartial choice of judges from among the most

<sup>1</sup> *Comm.* 1, 267.

<sup>2</sup> 13 Will. III, cap. 2.

<sup>3</sup> 1 Geo. III, cap. 23. One judge had been removed after the death of George I, two after the death of George II.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

well-known barristers.<sup>1</sup> But the rule was not without exception. During the early years of the 19th century the Attorney-Generals and the Solicitors-General claimed, as of right, the presidency of the high courts, when those positions fell vacant.<sup>2</sup> And they were professedly party men. Again, custom forbade the promotion of the Puisne Judges of the three high courts to the presidency of their courts. The custom checked intrigues.<sup>3</sup> But this rule also had its exceptions. 1817 was to see the promotion of Charles Abbott, after he had been in succession Puisne Judge of the Common Pleas and of the King's Bench, to be Chief Justice of the King's Bench. There was, moreover, nothing to prevent a Chief Justice, who presided over the Common Pleas, from aspiring to pass through the Common Pleas into the King's Bench, or to become Lord Chancellor. Again, custom forbade the judges ever to appear at Court—in other words, to do anything that would appear like soliciting favours. But what was there to prevent them frequenting the Prime Minister and the other members of the Cabinet? Here, indeed, we are face to face with the decisive question, and the independence of the judicial Bench as against royal interference will depend on the answer. To what extent were the Ministers, as agents of the royal power, inclined to violate established usages in order to

<sup>1</sup> *Morning Chronicle*, October 31, 1812: "The nation has not been much accustomed to see promotion in our Courts of Justice conferred as in the Church and other departments of the State, and will be deeply indignant if they observe a preference of the claims of favouritism or corruption to the fair pretensions of personal qualifications." Since the *Morning Chronicle* was an Opposition paper, its testimony is valuable.

<sup>2</sup> See a memorandum by Lord Eldon, who, moreover, protests against this claim, and Twiss, *Life of Lord Eldon*, vol. ii. pp. 510-12. Cf. Lord John Russell, *Essay on the English Government*, 1823, pp. 410-11: "The . . . offices . . . of Attorney and Solicitor General imply a determination to support the measures of Government when called upon, as thoroughly as the interests of any private client whom a lawyer undertakes to defend. The path to the office of judge very frequently, and to the office of Lord Chancellor almost always, passes through these offices. It follows, that the road of ambition for a lawyer is to attach himself to the governing party in the State."

<sup>3</sup> Cottu, *Administration de la Justice Criminelle en Angleterre*, pp. 141-2.

## POLITICAL INSTITUTIONS

carry out the personal policy of George III or the Regent? To what extent, on the other hand, as Members of Parliament and responsible to Parliament, was it their interest to defend, in opposition to the head of the executive, customs which safeguarded the independence of his subordinates?

We must now consider a glaring example of confusion between the judicature and the executive. According to Blackstone, "nothing is more to be avoided in a free constitution than uniting the provinces of a judge and a Minister of State."<sup>1</sup> Now, as far as the three courts of Common Pleas, King's Bench and Exchequer are concerned the British Constitution practically succeeded in avoiding this danger. We say "practically," because Lord Mansfield, the Chief Justice of the King's Bench, had been allowed for a long period during the early years of the reign to attend almost openly all the Cabinet meetings, and Fox seems to have been astonished at the violent opposition aroused when in 1806 he offered a seat in his Cabinet to Lord Ellenborough, who occupied the same position as Lord Mansfield.<sup>2</sup> But there was a fourth court whose president, the Lord Chancellor, was an ex-officio member of the Cabinet. And, like the other Ministers, he was removable. He was in truth a Minister, without the title, who was regarded as more dependent than his colleagues on the royal pleasure, and less bound by the joint decisions of the Cabinet than his fellow Ministers.

<sup>1</sup> *Comm.* 1, 269.

<sup>2</sup> See the Debates, H. of L., March 3, 1806 (*Parl. Deb.*, vol. vi. p. 253); H. of C., March 3, 1806 (*id. ibid.*, p. 286). See especially a speech by Canning (*id. ibid.*, p. 298). In a letter to Wilberforce of February 4, 1806 (*Private Papers of Wilberforce*, pp. 125 sqq.), Lord Ellenborough pleads extenuating circumstances: ". . . In accepting it I have stipulated that I should not be expected to attend except on particularly important occasions, and on such occasions some of my predecessors and particularly Lord Mansfield has, I understood, been called upon for his advice, and indeed, in virtue of my oath as Privy Councillor, I am bound to give that advice when required." Chester was a County Palatine with its independent courts, composed of a Chamberlain and of a Chief Justice. In 1814 the Government conferred on Sir William Garrow, the Attorney-General, the post of Chief Justice of Chester. Sir William Garrow resigned his seat as Member for Eye, but remained Attorney-General. See Romilly's proposals, H. of C., March 1, 1814 (*Parl. Deb.*, vol. xxvii. p. 338).

It was the Chancellor who appointed in the provinces the justices of the peace and the officers of the militia. It was urged that, since as judge he tried civil not criminal cases, his performance of strictly executive functions did not endanger the liberty of the subject. But it was his office to judge "petitions of right" in which the subject was plaintiff against the Crown. And when a peer was tried by his fellow peers he presided over the trial in his capacity of Lord High Steward. During the sessions of Parliament, his powers were limited, for his function in the House of Lords was merely that of president. When, however, the House was not sitting he had to decide all cases. He possessed authority to summon a fixed number of peers to act as jurors, and he exercised with their assistance precisely the same functions as the Lord Chief Justice exercised in the King's Bench or Common Pleas. In the person of the Lord Chancellor the separation of the judicature and the executive was frankly disregarded. But it remains to inquire to what extent, in reality, this high officer of State could or would become, in the Cabinet, the agent of an arbitrary and despotic policy. Here also the question of the degree of independence of the judicature, as against the executive, has brought us back to that other question, the question of the independence of the executive itself as against the head of the executive.<sup>1</sup> But, as we have already seen, the institution of a responsible Cabinet answered the latter question unfavourably to the royal authority.

<sup>1</sup> As regards the desirability of a separation between the legislature and the judiciary, Lord St. John publicly disputed Montesquieu's doctrine (H. of L., March 3, 1806, *Parl. Deb.*, vol. vi. p. 261). "Such a doctrine in that House could never be recognized as a part of the law or Constitution of England, where it had uniformly been the practice to blend, in repeated instances, the judicial and legislative character. This served to prove how little, relative to the Constitution of this country, could be gathered from Montesquieu. He should look to better sources for information upon that subject, namely the Statute Book, and the practice and usage of the country." Cf. the Speech delivered by Fox on the same day in the House of Commons (*Parl. Deb.*, vol. vi. p. 308).

## POLITICAL INSTITUTIONS

### *Abuses. The Beginnings of Reform.*

All the abuses whose existence we have noticed in the other branches of the administration were rife in the English courts of law. Here also were sinecures and posts whose salary was paid to the nominal holder, while a subordinate did the work. Here also was the system of remuneration by "fees," which gave the Bench a direct interest in prolonging proceedings, so that the delays of the English law, especially in the Court of Chancery, had become proverbial. And to these abuses we must add the sale by the judges of a number of subordinate posts. This practice still subsisted in the courts after its abolition in 1809 in the executive departments. Even in cases where the judge did not possess the right to sell a post, he stipulated with the nominee for a share of the fees, and only a fixed proportion, and that as small as possible, was left for the petty official. All these abuses had aroused the same protest from public opinion as the abuses in the other branches of the administration. Bentham, the apostle of reform in civil and criminal law, in the penal system and in the administration of justice, had begun to gather round him a group of enthusiastic disciples; and here, as elsewhere, the reform of abuses had already begun. The reform of the Scottish courts in 1807 had demonstrated that it was possible to improve the administration of justice without undermining the fabric of society.<sup>1</sup> Nevertheless, legal reform was evidently being effected more slowly than the reform of the civil service, for it had to face exceptionally powerful obstacles.

Bitter were the complaints of the interminable length of suits pending in the Court of Chancery. Lord Eldon, instead of simplifying the procedure, created a new post, that of

<sup>1</sup> 48 Geo. III, cap. 151. On this reform see Cockburn, *Memorials of his Time*, pp. 219 sqq., 244 sqq., and *Life of Jeffrey*, vol. i. pp. 176-7; Romilly, *Memoirs*, vol. ii. pp. 165 sqq. Walter Scott criticized the reform in an article in *The Edinburgh Annual Register* (1808, Part II, pp. 342 sqq.). Cf. Lockhart, *Life of Walter Scott*, vol. iii. pp. 266 sqq. See also for a widely different standpoint, Bentham, *Scotch Reform considered with Reference to the Plan proposed in the late Parliament*, 1808 (*Works*, vol. v. pp. 1 sqq.).

Vice-Chancellor.<sup>1</sup> The post was created to provide a pension for a faithful servant of the Tories, Sir Thomas Plumer, the Attorney-General. A cry was raised for the abolition of remuneration by fees and the sale of posts. The judges replied that, if their perquisites were suppressed, their salary would be insufficient to provide them a livelihood. They demanded and demanded successfully, as a condition precedent to any reform, that their salaries should be raised and retiring pensions granted whose amount was fixed by statute.<sup>2</sup> Indeed, the very nature of the English legal institutions must, it would seem, have a tendency to perpetuate abuses. There was no clearly defined separation between the barristers and the judges, and consequently no professional rivalry between them. The reformers, therefore, necessarily failed to find in the barristers wholehearted allies in their campaign against a body of which the barristers themselves formed part. Nor was there any definite separation, and therefore no hereditary feud between the judges and the aristocracy of which Parliament was composed. This made it impossible to expect from Parliament a crusade against the disorders of the judiciary.

The organization of the judiciary was, as we have seen, ill-defined. Once again we are compelled to correct Montesquieu's interpretation of the British Constitution. His two definitions of that constitution—a constitution based on the division of powers, a mixed constitution—are not equivalent, and the latter is the more accurate. The

<sup>1</sup> 53 Geo. III, cap. 24.

<sup>2</sup> H. of C., March 27, April 20, April 27, May 15, 1809; H. of L., June 13, 1809. Debate on the Sale of Offices Prevention Bill (*Parl. Deb.*, vol. xiii. p. 820, vol. xiv. pp. 113, 268, 573). H. of C., June 1, 12, 1809. Judges' Salaries Bill (*Parl. Deb.*, vol. xiv. pp. 833, 988).—An Act of 1799 had raised the salary of the Master of the Rolls and of the Chief Baron of the Exchequer to £4,000, of the Puisne Judges of the three Common Law Courts to £3,000, and had conferred on the Crown the right to grant the officials of the Westminster Courts retiring pensions statutorily graded. These pensions ranged from £2,000 to £4,000 (39 Geo. III, cap. 110). The Act of 1809 raised the salary of the Chief Baron of the Exchequer to £5,000, that of the Puisne Judges to £4,000, and added £400 to the salaries of the Chief Justice of Chester and of the Welsh Judges (49 Geo. III, cap. 127). Gneist, *Verfassungs und Verwaltungsrecht* (vol. i. p. 495), gives an inaccurate account of the Act of 1799, and omits altogether the Act of 1809.

## POLITICAL INSTITUTIONS

British Government was not a Government in which all the powers were clearly distinguished. It was rather a Government in which all the constituent parts were confused, and in which all the powers mutually encroached. King George III was mistaken in his belief that he could take advantage of this confusion to increase surreptitiously the influence of the executive over the two other powers. In reality a mass of usages, already over a century old, usages which the Tory reaction was powerless to overthrow, protected both the judges and the other officers of State against the despotic tendencies of the chief of the executive. In short, all the powers were indeed confused, but in such fashion that this confusion must always operate to the detriment of the monarchy. This conclusion has been already verified by our examination of the departments of the central government, but it will strike us even more forcibly as we proceed to examine the local government and the manner in which the capital judged and administered the provinces.

### LOCAL JUSTICE AND LOCAL GOVERNMENT

#### *The Central Government and the Provinces. The Justices of the Peace.*

We will examine first the administration of justice in the provinces. The only paid judges recognized by the British Constitution were the judges of the capital, who sat in Westminster Hall; the only barristers in England belonged to the London Bar. At first sight this appears an extremely centralized system; but the legal administration of England was not in reality so centralized as would appear at first sight. Had every Englishman been obliged to come up to London to obtain justice, the provinces would have been left without any judicial administration. But a system had been devised by which, without the creation of provincial courts, the English judges were enabled to deal with crimes and offences committed in the provinces. Once a year in the four northern counties, twice a year in the other counties, the judges of the Common Law Courts went on circuit in groups of two to

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

try civil and criminal cases. But these representatives of the capital made but a passing appearance in the provinces. They had barely arrived before they went away. The country was left to make its own provision for the maintenance of law and order. So with the other branches of administration. The London Government required local agents to collect its revenues, and as the population grew larger and wealthier, and the budgets heavier, more agents became necessary. There were the postal officials. To manage 61 mail-coaches, 4,000 horses and 54 packet-boats, the State, it has been estimated, maintained some 1,500 officials;<sup>1</sup> and there were the customs officers, with a whole host of searchers, surveyors, coast-waiters, tide-surveyors, tide-waiters, watermen, coal meters, riding officers and masters of revenue cutters—in all 9,000 officials for the three kingdoms. There were also the agents of the Treasury, comptrollers of stamps, collectors of the direct taxes, and, above all, the 7,500 excisemen who collected the duties on articles of consumption. The total number of these officials approached 25,000.<sup>2</sup> But this number, though it aroused the ire of Opposition orators, was in reality by no means excessive, if we take into account the needs of a large Empire.

In England the central government did nothing to secure the public safety, provided no schools, made no roads, gave no relief to the poor. With the one exception of the postal service, the State performed no function of immediate benefit to the taxpayer. In the eyes of the public the State appeared

<sup>1</sup> Great Britain 1,129, Ireland 347. See *A Return of the Number of Persons Employed . . . 1828*. Adolphus, *British Empire*, vol. ii. pp. 37-8, makes out, on the other hand, about 4,000 postal employees of all ranks.

<sup>2</sup> 24,598 officials in 1815. In 1797 there were only 16,267 (*A Return . . . 1828*). These official statistics give higher figures than those accepted alike by writers who supported or opposed the Government. See Colquhoun, *Wealth . . . of the British Empire*, p. 124; 3,500 persons in the superior civil offices, 18,000 in the inferior civil offices. This gives a total of 21,500 officials. Cf. H. of C., June 24, 1822 (Bonnet's speech, *Parl. Deb.*, New Series, vol. vii. pp. 1309-10): "There were between 18,000 and 20,000 civil officers whom the Crown nominated and paid. . . . There was, in fact, a large army in the Customs and Excise—a body equal in number to the standing army kept up in this country in the good old times."

## POLITICAL INSTITUTIONS

only as the power that enlisted men and levied taxes. The local representatives of the central government were sorry creatures, ill paid, without prestige, unpopular. And of all the excisemen were the most unpopular. The inquisitorial powers conferred upon them by law, their authority to tax the subject uncontrolled, like the collectors of the direct taxes, by the local aristocracy, had made them for over a century a living symbol of arbitrary government. Even Blackstone, staunch Conservative as he was, did not attempt to defend this form of taxation. "The rigour and arbitrary proceeding of excise laws seem," he wrote, "hardly compatible with the temper of a free nation."<sup>1</sup>

And, as we should expect, the landed gentry exploited this hostility of public opinion to destroy the influence which the agents of the central government might otherwise have opposed to their own. In 1782 all collectors of taxes, direct and indirect alike, had been deprived as a body of the franchise.<sup>2</sup> This step was a direct blow to the influence which the Crown could exercise at an election, and tightened the grasp of the landed proprietors on the local administration. The landlords were, indeed, the true rulers of the English provinces. From among them, according to a long-established custom, was chosen the body of justices of the peace. A host of subordinate functions, both administrative and judicial, were discharged by these magistrates, whose number was indeterminate and varied with each county. A succession of statutes had assigned to them these diverse duties. In some cases they were to administer justice individually, in others the law demanded the cooperation of at least two magistrates.

<sup>1</sup> 1 *Comm.* 318. Blackstone, to clear the British Crown of responsibility, adds that the Excise is an institution of republican origin. "Though Lord Clarendon tells us that to his knowledge the Earl of Bedford (who was made Lord Treasurer by King Charles I), to oblige His Parliament, intended to have set up the Excise in England, yet it never made a part of that unfortunate Prince's revenue, being first introduced, on the model of the Dutch prototype, by the Parliament itself after its rupture with the Crown."

<sup>2</sup> 22 Geo. III, cap. 41. Cf. H. of C., May 6, June 14, 1785 (*Parliamentary Register*, vol. xviii. pp. 220 sqq., 501 sqq.), debates on Beaufoy's motion "to bring in a Bill for the purpose of correcting and defining the jurisdiction of the Commissioners of Excise, and for extending the right of trial by jury."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

They must also meet at regular intervals in specified places, and at those meetings they were assisted by a clerk. The meetings were of three kinds—Special Sessions, Petty Sessions, and Quarter Sessions. The Quarter Sessions were held every three months in solemn state, and all the magistrates of the county were supposed to attend. The justices were unpaid. Their functions were regarded as an honour, and were assigned by the executive to men who were sufficiently rich and sufficiently disinterested to devote their leisure to the public service. No expert legal knowledge was required of a magistrate. It was considered that he would judge well enough by the light of common sense. Formerly the magistrates had been assisted by a certain number of professional judges, but this old precaution had fallen gradually into disuse without any protest being raised.<sup>1</sup>

The functions performed by the justices of the peace were primarily judicial. For a large number of petty offences they had the right either to pass an immediate sentence sitting alone or in pairs, or to refer the case to Quarter Sessions, a court itself composed of magistrates. But they performed administrative functions also. Suppose, for instance, a bridge fell into ruin. The magistrates summoned before their Bench the inhabitants of the parish in which the bridge was situated and ordered them to pay for its repair. If we call this sum, which the parishioners were compelled to pay, a fine for previous neglect, the decision may be considered a judicial sentence; if, however, we call it a rate, the decision must be considered an administrative act. But of all the functions performed by the magistrates one of the most important was precisely that of approving the parish rates, the rate for the upkeep of the roads and the poor rate, and of fixing the amount of the county rate. Since such an important part of English law, the "common law," is case-made law, the magistrates, thus at once judges and executive officials, possessed the power to determine from time to time

<sup>1</sup> Gneist, *Verfassungs und Verwaltungsrecht*, vol. ii. p. 178. S. and B. Webb, *English Local Government*, vol. i. pp. 302-3. Blackstone, in the passage which he devotes to the justices of the peace (1 *Comm.* 351, 2), cites two statutes, passed during the 18th century, which expressly declare the assistance of professional judges to be henceforward unnecessary (26 Geo. II, cap. 27; 7 Geo. III, cap. 21).

## POLITICAL INSTITUTIONS

what actions fell within the scope of the old statutes which regulated local government; and by increasing at their pleasure the number of these actions, they were able to extend their jurisdiction, and to impose an ever-increasing number of obligations on the inhabitants of the county. The Courts of Quarter Sessions were genuine legislatures engaged in building up from quarter to quarter a new code of law under the pretext of interpreting the old. In this capacity they put together during the last years of the 18th century a complete poor law, first in one county, then in another, acting on their own initiative, without any interference by the central government. Yet once again we may ask, what becomes of the classic doctrine of the separation of powers? The county magistrates unite in their person the judicial, the legislative and the executive power.<sup>1</sup> Montesquieu does not even mention the justices of the peace. Nevertheless, with the responsible Cabinet they are the most original and the most characteristic of all British institutions.

If, indeed, we were to take into consideration only the letter of the various statutes which defined the organization and determined the jurisdiction of the justices of the peace, the entire institution would appear to have been designed for the express purpose of maintaining the control of the central government over the provinces.<sup>2</sup> Till the 14th century those entrusted with the preservation of the peace in the provinces either held this charge by prescriptive right, or in virtue of the tenure of their lands, or had been elected by the free-holders. Edward III introduced a system of direct nomination by the Crown, and shortly afterwards he conferred upon these officials, together with the title of justices, authority to try

<sup>1</sup> On this confusion of powers see especially S. and B. Webb, *English Local Government*, Book II, The County (vol. i. pp. 419, 445, 533 sqq. *et passim*).

<sup>2</sup> This adherence to the letter of the law seems to us the radical error of Gneist—an error which to some degree detracts from the value of the important works in which for the first time the importance of the institution of justices of the peace in the British Constitution has been clearly brought out. It is the mistake of a lawyer, and of a Continental lawyer, who imagines the gentry who ruled the English counties after the model of the German nobility, a body far more hierarchic and bureaucratic.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

felonies.<sup>1</sup> By this means the justices of the peace served to strengthen the power of the central government and of the monarchy. Nominees of the Crown, the magistrates were in theory removable by the Crown. They were not representatives chosen by the county for the work of local government. They were the representatives in the county of the central government, appointed by that government to control the units of local administration, the parishes and the hundreds. They had, moreover, encroached on the autonomy of these units. They appointed in each parish the constable, charged with the police of the district;<sup>2</sup> the surveyor of the highways,<sup>3</sup> responsible for the upkeep of the roads; and the overseer of the poor, who administered the Poor Law. It is true that the magistrates must be residents of the county and own in their county land bringing in a net annual income of at least £100—this to guarantee the aristocratic character of the institution. But their authority emanated from the State. Thus in many of its features the institution of the justices of the peace would seem at first sight an instrument of monarchic centralization. It would appear to have been devised for the express purpose of securing the necessary control of the central government over the entire social fabric.

But to understand the spirit of a law, we must learn how it is applied in practice and the manner in which that application has in the course of time been altered; and it is indisputable that, as regards the magistrates, the 18th century in England had been a period of decentralization—a period during which the central government had relaxed its control over the justices of the peace. Since the Stuart Restoration, but above all since the Revolution of 1688, the law had increased the number of cases triable by Quarter Sessions as a court of final instance, without power of appeal from "their decisions

<sup>1</sup> 1 Edw. III, st. 2, cap. 16; 4 Edw. III, cap. 2; 18 Edw. III, st. 1, cap. 2.

<sup>2</sup> In strict law the constable was appointed by the Court Leet. (For the Court Leet, an administrative and judicial institution of feudal character and origin, see S. and B. Webb, *English Local Government*, vol. ii, pp. 21 sqq.) When the Court Leet fell into abeyance, the Law (13 and 14 Car. II, cap. 12 and 15) provided that in default of the Court Leet the justices of the peace were to have the right to appoint the constables, and in the vast majority of cases they appointed them in practice.

<sup>3</sup> 3 and 4 William and Mary, cap. 12.

## POLITICAL INSTITUTIONS

to the high court judges.<sup>1</sup> Legally, the magistrates continued to be removable, but they came more and more to be regarded as irremovable.<sup>2</sup> They were certainly Crown nominees, and in theory the royal choice was uncontrolled. But the custom had been established for over a century that they should always be chosen on the recommendation of the Lord-Lieutenant of the county. By custom the office of Lord-Lieutenant was given to the largest landowner of the county, and it required very exceptional circumstances, a political crisis of extraordinary gravity, for the King and his Prime Minister to make use of their right to deprive a Lord-Lieutenant.<sup>3</sup> In reality, therefore, it was not the King, but the head of the local aristocracy, an official holding his position for life, who, after a more or less explicit understanding with the body of justices, made new promotions from the ranks of the county landowners. Thus the body of magistrates was coincident with the good society of the district. To be admitted into their ranks by the purchase of land, or by performing the wearisome and costly duties of High Sheriff, was the honour coveted by all the *nouveaux riches* of the neighbourhood.

The composition of the Bench varied with the period and the locality. Formerly the Anglican clergy had been ineligible, but as a result of the Protestant revival of the 18th century, a more serious understanding of religion and the increased favour shown by public opinion to Christian beliefs, their presence on the Bench was now tolerated, even desired. During the last forty years great numbers of clergy had become magistrates. If we may credit certain accounts, over half the justices sitting at the sessions were clergymen.<sup>4</sup> Was

<sup>1</sup> 5 William and Mary, cap. 11; 8 and 9 Will. III, cap. 33; 1 Anne, cap. 18 and 55; 5 Geo. II, cap. 19; Gneist, *Verfassungs und Verwaltungsrecht*, vol. ii. pp. 168-9.

<sup>2</sup> S. and B. Webb, *English Local Government*, vol. i. pp. 380-1.

<sup>3</sup> The Earl of Carlisle, Lord-Lieutenant of the East Riding in 1780; the Duke of Norfolk, Lord-Lieutenant of the West Riding in 1798.

<sup>4</sup> Cobbett's *Political Register*, May 22, 1811, vol. xix. p. 1256: "In the country more than two-thirds, I believe, of those who attend at the Sessions are clergymen of the Church of England." Cf. Hume's speech, H. of C., April 18, 1833 (*Parl. Deb.*, Third Series, vol. xvii. p. 282): ". . . the Sessions of whom one-half was . . . composed of clergymen." According to S. and B. Webb,

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the Bench also open to financiers and to manufacturers? That depended on the district. In Lancashire the magistrates were exclusive and the cotton-spinners were debarred from a Bench offended by their too recent wealth, disgusted by their vulgarity.<sup>1</sup> In the south-west, on the other hand, the manufacture of woollen cloth was an old-established industry. The manufacturers belonged to old county families, the aristocracy of the district. In the southern counties the London financiers and bankers possessed sufficient wealth and influence to make their way on to the Bench. Here, too, there is an absence of clearly defined boundaries. England possessed no close castes. But, generally speaking, it is true to say that if the Bench of magistrates was in part drawn from those outside the old landed aristocracy, the extent to which this was the case exactly measured the proportion in which, under the influence of novel conditions, this aristocracy had itself absorbed new elements.

### *Distinctive Features of the British System of Civil Administration.*

We have termed the British Constitution a mixed Constitution. We should be equally right to characterize it as a decentralized Constitution. Not only were all the powers of government confused, the head of the State, and this is of the first importance, was powerless, or almost powerless. At the summit of the political edifice were the Ministers, who controlled the preparation of new legislation, and the national executive. The King was not responsible for their acts. At its base the justices of the peace judged, administered and legislated, and to their hands the central government abandoned the greater part of local government. No doubt the country gentlemen, the old landed families, were deeply attached to the Tory cause; but they were equally jealous of

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there were 1,354 clerical J.P.s in 1832—that is to say, a quarter of the entire body (*English Local Government*, vol. i. p. 384 n.). The custom on this point varied with each county. See *Wakefield, Ireland*, vol. ii. p. 339.

<sup>1</sup> See the Debates, H. of C., May 12, 1813 (*Parl. Deb.*, vol. xxvi. p. 100).

## POLITICAL INSTITUTIONS

their independence, and nowhere were the old prejudices against every kind of administrative centralization, against any sort of bureaucracy, more powerful than among the gentry. These prejudices had triumphed in 1688, with the conquest of power by the Whigs, but this triumph would not have been so final or so complete had not the deepest rooted sentiments of the Whigs been shared by their bitterest foes. Thus the Tory reaction, by strengthening the hold of the Tory gentry over local government, confirmed the predominance in the British Constitution of what may be termed the Whig principle. English society was freed from State control and left to govern itself. "In England," wrote one of his correspondents to Lord Eldon, "the machine goes on almost of itself, and therefore a very bad driver may manage it tolerably well."<sup>1</sup>

The system which we have described was anything but democratic. The justice of the peace was an aristocrat who, without the assistance of a jury and without any regular procedure, decided a host of questions, very largely affecting his property. And from the same class were taken both the House of Commons, which made the laws, and the Cabinet, which directed the general policy of the country. Moreover, it is clear that the same institutions might appear at the beginning of a century favourable, at its close unfavourable, to the liberties of the people. In 1688 and in the years following, the King regarded himself, and was regarded by public opinion, as the Sovereign. It was always to be feared that he would attempt to make his sovereignty absolute, and the independence of his authority enjoyed by all the powers of the State constituted a deliberate limitation of the prerogative, a system of constitutional guarantees against royal despotism. At the opening of the 19th century it was the people who in America, in France, in England even, had asserted, or were about to assert, their claim to sovereignty; it was therefore against the people that the three Powers now maintained their independence. It was no longer the Whigs, it was the Tories who supported institutions whose significance had changed, while their form remained the same.

<sup>1</sup> Twiss, *Life of Lord Eldon*, vol. ii. p. 443. Lord Redesdale to Lord Eldon, December 19, 1821. "It is not so in Ireland," adds Lord Redesdale.

And now the King presided over the league formed by the three Powers for the defence of their autonomy against the new claimant to sovereignty.

But while this must be said to explain the attacks made upon the established institutions about 1815 by English democrats, we must not therefore regard the system as a tyranny, and ignore the elements of genuine liberty which it contained. Doubtless among the enormous number of magistrates was to be found more than one petty tyrant, ready to abuse the powers conferred upon him by law, to terrorize the proletariat. We have only to think of Caleb Williams' persecutor in Godwin's famous novel. But are we to regard such a man as typical of his order? Others, clergy and laymen alike, won the admiration of their contemporaries by their humanitarian zeal. Typical of a far more numerous body of magistrates is Fielding's Squire Western, a hard drinker, a big eater, a keen hunter, the despot of his family circle, a lover of good cheer, universally popular. Even the most determined reformers regarded the magistrates with indulgence. "The system of magistracy," declared Whitbread in 1807, "had its defects; but in what other country was there a body so excellent?"<sup>1</sup> Their administration of justice appears to have been on the whole easy-going and kindly, their administration of the Poor Law lax, even wasteful. But the magistrates cannot altogether claim the credit for this mildness and generosity. In reality they only wanted not the will to oppress, but the means of oppression.

By their obstinate struggle against the King and his Ministers, and by their final reduction of the control of the central government to almost nothing, the landed gentry had at the same time deprived themselves of the help of the central government to suppress popular disorder. Without the assistance of a large and well-organized body of police, what force was at the disposal of the magistrates isolated on their several estates, and swamped in the mass of agricultural labourers or factory hands? We have but to read Wesley's Diary to realize how impotent were the guardians of law and order in the English country districts. Whenever the open-air sermons of the great Methodist preacher occasioned a riot among the people, what time was lost in the search for

<sup>1</sup> H. of C., July 13, 1807 (*Parl. Deb.*, vol. ix. p. 803).

## POLITICAL INSTITUTIONS

a magistrate, and even when he did at last arrive, how great was his difficulty in calming the storm without any armed force at his disposal or other means save persuasion or trickery! As the urban centres multiplied, the inadequacy of this patriarchal and rustic system became increasingly evident. To check the growth of crime, Parliament made the penal code even more severe than before. At the end of the 18th century well-nigh two hundred offences were capital.<sup>1</sup> A few police measures had also been adopted. Barracks containing small bodies of soldiery had been established in the country districts. In London a certain number of stipendiary magistrates had been provided, who were assisted by police officers.<sup>2</sup> Towards the end of 1811 an outbreak of crime in London excited a panic not only in the capital but throughout the entire country. The papers noticed the formation in the most widely separated localities of police associations, voluntary unions of the leading gentlemen of the district.<sup>3</sup> Obviously the aggravation of penalties for crime was but a clumsy expedient to compensate for the extreme uncertainty of its repression. But the national optimism opposed an obstinate resistance to the organization of a State police throughout the country. Under the Tories England remained fundamentally what it had been in the days of Whig rule—a country governed without police. To palliate the evils of such a system men reckoned on the phlegmatic temperament of the people, and on the rarity of murders and acts of revenge. The public was prepared, if necessary, to put up with a certain amount of disorder, if it

<sup>1</sup> Blackstone, 4 *Comm.* 18-19. Stephen, *History of the Criminal Law in England*, vol. i. pp. 469 sqq. Remark in the same passage his reflections on the non-enforcement of these penalties.

<sup>2</sup> 32 Geo. III, cap. 53 (a temporary measure renewed regularly). See S. and B. Webb, *English Local Government*, vol. i. pp. 573 sqq.

<sup>3</sup> For Chelsea see the *Morning Chronicle*, January 14, 1812: "The Committee appointed by the inhabitants of Chelsea put their patrol of ten men in motion on Sunday night. These men are relieved at midnight by a second party, who patrol till daylight. It is highly honourable to the Gentlemen of the Parish who have voluntarily tendered their services to superintend the conduct of this patrol. The first patrol on Sunday night was conducted by Thomas Bonnor, Esq." For Morpeth and Bolam see *Newcastle Chronicle*, February 1, 1812; for Heaton and Jesmond *ibid.*, March 27, 1813.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

was the price of freedom. "They have an admirable police at Paris," wrote John William Ward, "but they pay for it dear enough. I had rather half-a-dozen people's throats should be cut in Ratcliffe Highway every three or four years than be subject to domiciliary visits, spies, and all the rest of Fouché's contrivances."<sup>1</sup>

### THE NAVY

#### *The Army and the Constitution. The Navy.*

From our account of the national executive, we purposely omitted the officials entrusted with the armed defence of the country against foreign enemies. For the importance of their office and the power at their disposal entitle them to separate consideration. The British Constitution recognized, as part of the Royal Prerogative, the command of the Army and the Fleet. To the King belonged "the sole supreme government, command and disposition . . . of all forces by sea and land."<sup>2</sup> This maxim, affirmed under Charles II, had not been disputed after the overthrow of the Stuarts. It was defended by appeal to the principle of a mixed constitution. Blackstone observes that monarchy is best suited to supply the Army with the necessary direction and unity of organization. "It follows," he wrote, "from the very end of its institution, that in a monarchy the military power must be trusted in the hands of the Prince."<sup>3</sup> But here danger lies. If, in a mixed constitution, the monarchy admittedly represents the principle of authority and discipline, so indispensable to the existence of a good army, must it not for this very reason endanger the balance of the constitution into which it has

<sup>1</sup> *Letters to Ivy*, December 27, 1811 (p. 146). Cf. *Morning Chronicle*, January 6, 1812: "We have heard much in praise of the admirable effects of the Police in Paris. Certainly the Police of Paris is most dexterously contrived for the purpose of tyranny, but that it is so very efficacious in the prevention of the blackest crimes that deform and afflict human nature we much question."

<sup>2</sup> 13 *Carl. II*, cap. 6.

<sup>3</sup> 1 *Comm.* 262.

## POLITICAL INSTITUTIONS

been admitted? It is by the support of a large, obedient and well-equipped army that a dynasty can free itself from the control of a rebellious people or a jealous aristocracy. The Whigs of 1688, taught by the history of seventeenth-century England, adopted the necessary precautions to render the military prerogative of the sovereign harmless to the liberties of the people. George III, therefore, in his desire to strengthen his authority, should surely have made it his first consideration to undo in this sphere, before any other, the results accomplished by the anti-monarchic policy of the Whigs. But to measure the success of this reaction, and to determine what was the actual position of the armed forces of England after sixty-six years of Whig policy and thirty of Tory, it is important at the outset to make a clear distinction between the Navy and the Army.

England maintained a very large navy. In 1792, at the opening of the great war, she possessed, according to the official statistics, a fleet of ships of the line almost double the French Fleet, close on 160 vessels as against a little over 80. But, on the other hand, such a large proportion of ships were unfit for service that the real superiority of the British over the French Fleet scarcely amounted to a sixth.<sup>1</sup> Moreover, by joining forces France, Spain and Holland could oppose to the 158 British ships of the line 295 ships of the line of the same class.<sup>2</sup> Ten years later, after the Peace of Amiens, England possessed, according to the official figures, 104 ships of the line in commission, 98 ships of the line in ordinary, or in course of construction, making up a total of 202 ships, to which France could now oppose only 39, and France, Spain and Holland together only 118. Taking into consideration only the vessels capable of immediate service, Addington estimated about this time that the British Fleet

<sup>1</sup> James, *Naval History*, vol. i. pp. 52-3. British Line—158, French Line—82 (pp. 45, 86). Here, and in what follows, we have not given the figures for the frigates; they would not alter the balance between the two navies.

<sup>2</sup> James, *Naval History*, vol. i. pp. 50 sqq. Holland 49 ships of the line, Spain 76, Portugal 6, Russia 40, Denmark 24, Sweden 18. But we must not forget that the six Portuguese ships were commanded by English officers and at the disposition of the British Government, nor that out of the forty-nine Dutch "ships of the line" a good number were not entitled to the appellation.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

was superior to the three hostile fleets by 60 ships of the line.<sup>1</sup> In 1806, after Trafalgar, the superiority of the British Navy was even greater. The figures then were: vessels in commission—128 ships of the line and 15 ships of fifty; ships in ordinary or in course of construction—88 ships of the line and 19 ships of fifty. Total: 250 ships. France possessed only 19 ships of the same class, Spain 57, Holland 16. Total: 92. England now possessed more ships than all the other European fleets combined, who could only oppose to England's 250 ships of the line, 239 ships of the line, including ships of fifty.<sup>2</sup> In 1812, at the critical moment when Napoleon on the verge of his sudden collapse had formed against England a European coalition, France had once more a fleet of about 100 ships of the line. If we add to these the 42 ships of the line in the Baltic which constituted the combined fleets of Russia, Sweden and Denmark, we have a total of some 140 units. But to these England opposed 250 units of the same class and of these ships 100 or 150 were in commission.<sup>3</sup>

Such was the strength of the British Navy towards the end of the great war. Its overwhelming superiority dates from this period. But this enormous increase of the Fleet did not affect, nor could have affected, the political institutions of the country. If on the conclusion of peace public opinion insisted on a reduction in naval expenditure, it was because the national debt was large and the Navy cost very dear. No

<sup>1</sup> H. of C., December 2, 1802 (*Parl. Hist.*, vol. xxxvi. p. 1039). For slightly different figures see James, *Naval History*, vol. iii. pp. 164 sqq.

<sup>2</sup> Adolphus, *British Empire*, vol. ii. pp. 199–200. For slightly different figures see William Burney, *The British Neptune* . . . , 1807, and James, *Naval History*, vol. iv. Appendix No. 14.

<sup>3</sup> *Quarterly Review*, September 1812, Art. II, *Pering and Money on Shipbuilding* (vol. viii. p. 55). Brenton, *Naval History*, vol. iv. p. 6. For slightly different figures for the British Fleet see James, *Naval History*, vol. vi. Appendix No. 20, and Chevalier, *Histoire de la Marine française*, vol. v. p. 3. On the conclusion of peace France was compelled to surrender thirty-one ships of the line to the Allies, and she lacked the money to equip those still left to her. This made it possible for England to effect with security a great reduction in her naval budget. See Brenton, *Naval History*, vol. v. pp. 359 sqq. He gives very different figures for the British Fleet, lower by about a half. This difference is due to the fact that Brenton here leaves out of account the ships in course of construction or in ordinary. See also Laignel, *Changements opérés dans la Marine anglaise*, 1819.

## POLITICAL INSTITUTIONS

ulterior motive of a political character, no anti-militarist feeling, inspired the Opposition speakers. A fleet could neither defend a Government against a rebellion, nor cause a revolution, nor effect a *coup d'état*. We must reserve, therefore, the constitutional question till we treat of the Army; as regards the Navy, it does not exist. This fact explains the universal popularity enjoyed by the naval officers and their crews. They protected the safety of all, threatened the liberty of none. And in this universal popularity we shall discover the cause to which alone, to the exclusion of any other factor, the naval power of the nation was ultimately due.

### *The Fleet.*

Was it the numerical superiority of the British Fleet that won the victory? Obviously it was not, for at the outbreak of hostilities this superiority was far from indisputable. Or was it, perhaps, to the better quality of their vessels, to the perfection of their equipment, that the British sailors owed their first successes? On the contrary, even after twenty years of victory, the existence of such a superiority in equipment was very doubtful. From the time when Peter Pitt in 1646 built the first English frigate, the *Constant Warwick*, after a French model,<sup>1</sup> and Sir Anthony Dean in 1674 built the *Harwich* in imitation of the French *Superbe*,<sup>2</sup> the British man-of-war had been a copy of the French. The English consoled themselves by the reflection that if the French constructed better vessels than they could build, they were masters of the art of capturing their ships and of employing them against the nation that had launched them.<sup>3</sup> Between 1793 and 1815 the British captured from the French and their allies 113 ships of the line and 205 frigates. Of these 83 ships of the line and 162 frigates became British men-of-war.<sup>4</sup>

<sup>1</sup> James, *Naval History*, vol. i. pp. 22-3. The very word frigate is of French and Mediterranean origin (*ibid.*, p. 20).

<sup>2</sup> *Quarterly Review*, January 1815, Art. 7. Seppings' *Improvements in Shipbuilding*, vol. xii. p. 450.

<sup>3</sup> See H. of C., January 7, 1795, Admiral Gardner's speech (*Annual Register*, 1795, p. 166).

<sup>4</sup> James, *Naval History*, vol. iii. p. 357; vol. vi. p. 505.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

The *Pomone* taken in 1794, the *Hoche* taken in 1799, were for a long time reckoned among the best ships that England possessed.<sup>1</sup>

And how did the dimensions of the English compare with the dimensions of the foreign men-of-war? The *Cæsar*, built by the English in 1793, did not attain the dimensions of the *Foudroyant*, captured from the French in 1758. The *Queen Charlotte*, built in 1810, was smaller than the Spanish *San Josef*, taken in the Battle of Cape St. Vincent in 1797. The *Howe* and the *St. Vincent*, ships of 130 built in 1815, were even smaller than the *Commerce de Marseille* of 120, taken at Toulon in 1794. And at the very moment when the Admiralty put them on the stocks, the Americans put on the stocks five vessels whose keel measured 200 feet in length as against the 170 feet of the two British ships.<sup>2</sup>

But if the designs of the Continental shipwrights were bolder and more skilful, was not perhaps the English workmanship superior, both in the public dockyards and in the yards of private builders? This was certainly the cherished belief of the Englishman. According to him, in England theory was not as in France divorced from practice; English engineers were actual workmen, who built their ships to a large extent with their own hands, and had the advantage of the lessons taught by first-hand experience.<sup>3</sup> But was this belief after all well founded?<sup>4</sup> When the British engineers set themselves, according to the traditional plan, to copy a French type, they prided themselves on introducing into every vessel a number of alterations. But almost always these alterations were not improvements. Often they were positive defects which hindered the navigation of the vessel. Lord Collingwood's correspondence is full of complaints on this

<sup>1</sup> Brenton, *Naval History*, vol. i. p. 244; vol. ii. p. 365.

<sup>2</sup> *Quarterly Review*, January 1815, Art. 7, Sepping's *Improvements in Shipbuilding* (vol. xii. pp. 444 sqq.). Brenton, *Life of Lord St. Vincent*, vol. i. pp. 67-8. Brenton, *Naval History*, vol. i. p. 42, and vol. ii. p. 564. (Dimensions of some of the most approved ships in His Majesty's Navy.) *An Enquiry into the . . . state of the . . . Navy, by an Englishman*, pp. 16 sqq.

<sup>3</sup> *Quarterly Review*, November 1810, Art 2, *The Natural Defence of an Insular Empire* (vol. iv. pp. 313 sqq.).

<sup>4</sup> For all the following see the *Quarterly Review*, September 1812, Art. 2, *Pering and Money on Shipbuilding* (vol. viii. pp. 28 sqq.).

## POLITICAL INSTITUTIONS

head.<sup>1</sup> Or, if not defects, they were too insignificant to be a decided advantage, while at the same time sufficiently important to break the unity of the squadrons. When Nelson was in command off Cadiz, his eighteen ships represented no less than seven distinct types. Each type required a special sort of mast, sail and yard, so that if a vessel were disabled, the others could not supply her with the means to repair the damage. Perhaps the British men-of-war were even worse constructed in 1815 than half a century earlier. A growing fleet had required continual and always hasty repairs. The average life of a man-of-war during the opening years of the 19th century was estimated by optimists at fifteen years, by those less optimistic at eight.<sup>2</sup> Not a few first-class vessels fell to pieces after five or even three years' service. How does this compare with the *Royal William*, built at Portsmouth in 1719, which took part in the Gibraltar expedition of 1782, and which in 1812 still carried the Port Admiral's flag at Spithead; or the *Barfleur*, built in 1768, and the *Montague*, launched in 1779, both of which were still effective ships in 1812?<sup>3</sup>

In 1809 an Order in Council established in the naval college at Portsmouth a superior class of shipwrights' apprentices. Twenty-five young men, after a difficult entrance examination, were taught the theory and practice of shipbuilding. On the

<sup>1</sup> *Life*, vol. ii. p. 77. Letter to Lord Mulgrave, December 11, 1807: ". . . The *Endymion* is complaining very much, owing to her enormous masts, which are more than can be secured. On this subject I must observe to your Lordship, that the wall-sided ships, and those heavy masted, are a continual burden upon the docks and arsenals; while the ships of the old establishment, as the *Terrible*, *Saturn*, *Zealous*, *Queen*, and such whose sides fall in, are most to be depended on in winter for service." *Ibid.*, vol. ii. pp. 310-11. Letter to Blackett, February 18, 1809: "I was then on my way to Naples with my ship in a very ricketty and bad condition, from an ill-judged experiment which the Surveyors of the Navy were making, in the mode of securing the vessels. . . . We have now replaced all the copper bolts with iron ones. . . ."

<sup>2</sup> *Quarterly Review*, article above mentioned (vol. viii. p. 32). Cf. Brenton, *Life of St. Vincent*, vol. ii. p. 234.

<sup>3</sup> Cf. Brenton, *Naval History*, vol. i. pp. 15-16. The *Phœnix* (Spanish), of eighty guns, taken by Sir George Rodney in the year 1780, and called the *Gibraltar*, was supposed to have been fifty years old at the time of her capture. She was built at Havannah of solid mahogany, and in 1810 she was cruising in the bay as an effective ship.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

completion of their course they cruised for one year, "during which," the order directed, "they shall mess with the officers, and be treated in all respects as gentlemen."<sup>1</sup> But this attempt to form in England an expert body of naval engineers, in imitation of the French naval engineers, was still too recent to have produced the results that might be expected. In one point alone during the last thirty years had any real improvement in technique been effected. Lord Howe and Sir Home Popham, by their method of signalling, had enabled the commander of a squadron to exercise a stricter and more continuous control over his subordinates, to make his orders more definite, and to alter them in the course of the battle. Naval tactics were transformed by the innovation. Formerly two hostile fleets never joined battle, unless they could oppose an equal number of ships of the same class. Drawn up in two parallel lines, they would manœuvre about with a view to direct collision; and the battle was reduced to a series of single combats, ship of the line against ship of the line, frigate against frigate. Now, however, the English Fleet had been rendered capable of concerted movements. Sometimes it would attempt to pass along the front of the hostile fleet, to surround the ships in the van, and to destroy them by force of numbers before the ships in the rear had time to come to their assistance. These were the tactics adopted at Aboukir. Sometimes it would make a flank attack and pierce the enemy's line in one or two places. His van was then left to drift, while the ships in the rear were destroyed one by one, as the wind drove them into the attacking squadron. These were the tactics of Cape St. Vincent and Trafalgar.<sup>2</sup> These

<sup>1</sup> *Quarterly Review*, article above mentioned (vol. viii. p. 31).

<sup>2</sup> The exponent of these new tactics was John Clark of Eldin, in his treatise on naval tactics (1782). He in turn seems to have made use of the theories of Continental tacticians. See Brenton, *Life of St. Vincent*, vol. ii. Lord St. Vincent's letter to Lord Howick, June 2, 1806: ". . . Not having Mr. Clark's treatise on naval tactics with me, I am unable to give you a detailed opinion upon the influence it has had in the several victories our fleets have obtained over those of France, Spain and Holland since its publication. I would not for the world subtract from the merits of Mr. Clark, which I have always admitted; yet, on referring to the encyclopædia, wherein are copious extracts from the pamphlet, I perceive evident signs of compilation from Père le Hoste down to Viscount de Grenier. In truth, it would be difficult for the ablest

## POLITICAL INSTITUTIONS

combined movements were, however, only possible in a small number of important battles, and a careful study of these very battles<sup>1</sup> will reveal the impotence of the admirals to prevent the speedy degeneration of the struggle into a disordered mêlée, in which the victory was decided by luck, by the ardour of the crews, or by the skill and energy of individual captains. After all, naval tactics had changed little in the course of a century. A contemporary of the first Pitt, or even of William of Orange, would not have felt lost had he to serve under Lord St. Vincent or Nelson. The vessels were still at the mercy of favourable or unfavourable winds. They were still the same conglomerations of planks, all of which shifted several inches when the vessel was launched, and which afterwards were only kept together at all by the external pressure of the water in which they were plunged, and fell apart as soon as they were brought on to dry land. The industrial revolution, which during the last forty years had been transforming manufactures, had not as yet affected the methods of war. In the Navy the age of iron and steam had not begun. Events of revolutionary significance had taken place in the naval history of the great Powers, but there had been no corresponding revolution in the construction and equipment of men-of-war.<sup>2</sup>

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seaman and tactician to write upon the subject without running into one or all the French authors." Certainly the French were not slow to learn the tactical principles of St. Vincent and Nelson. In 1811, at the Battle of Lissa in the Adriatic, we find these tactics employed, though unsuccessfully, against the British Fleet (Brenton, *Naval History*, vol. iv. p. 547).

<sup>1</sup> Brenton, *Naval History*, vol. iii. p. 474 (extract from Collingwood's report on the Battle of Trafalgar): ". . . As the mode of our attack had been previously determined on, and communicated to the flag officers and captains, few signals were necessary, and none were made, except to direct close order as the lines bore down."

<sup>2</sup> Whitbread (H. of C., April 24, 1815) complained that the new steam and hydraulic engines were still ignored by the Admiralty; "that the improvements which to a wonderful extent had been made in all the private concerns of the country, were so slow in finding their way into the public establishments, and especially the dockyards. . . . In the same place, and almost in the same spot, at Portsmouth, where Mr. Brunell's improvements were carrying on—improvements that, two or three centuries ago, would have had their ingenious author hanged for witchcraft—trucks were to

*The Crews.*

We have failed to discover in the material equipment of the British Navy the secret of British sea power; we must therefore seek it in the character of the men who manned the vessels. But although we are now closer to the solution of the problem, many difficulties still face us. It is easy to misunderstand the true nature of the causes to which was due the bravery of the crews and their officers.

It has been often said that since England possessed the largest mercantile marine of the entire world, she never found any difficulty in recruiting from her trading vessels the experienced seamen necessary to man her squadrons. But we must not forget that at the outbreak of a war the merchant shipping was scattered in every quarter of the globe. The country, therefore, could not obtain from her merchantmen the enormous complement of men required by the sudden emergency.<sup>1</sup> As the war continued, the nature of the problem changed, but its solution became no easier. The pay of sailors in the merchant service, at all times high, was raised still higher as the risks of navigation became greater. In the port of London the average pay of a sailor before the war ranged from £1 5s. to £1 15s. On the declaration of war it was raised immediately to £3 15s. By 1800 it had risen to four, by 1804 to five guineas. The State could not attempt to compete against such high rates.<sup>2</sup> Moreover, the British Government had no wish to transfer to the Royal Navy the crews of the Merchant Service. On the contrary, its aim was to maintain a navy sufficiently powerful to secure to as many merchant vessels as before the war, if not to an even larger number, a safe passage over the seas of both hemispheres; and the feat was actually accomplished. Between 1792, when war was declared, and 1812, when the naval

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be seen in a public department that would disgrace one of those American tribes whose boundaries were so lately the cause of contentions" (*Parl. Deb.*, vol. xxx. p. 809).

<sup>1</sup> A. T. Mahan, *Types*, pp. 447-8.

<sup>2</sup> The increase of pay during 1815 was £1 15s. See *Editorial Review*, No. 81, October 1824, Art. 8, *Abolition of Impressment* (vol. xli. pp. 154 sqq.).

## POLITICAL INSTITUTIONS

forces reached their maximum, the number of sailors increased from 36,000 to 114,000.<sup>1</sup> During the same time the numbers engaged in the Merchant Service increased from 118,000<sup>2</sup> to 165,000 men.<sup>3</sup> But to obtain this result the Admiralty was driven to every conceivable expedient.

The traditional method was the press gang. The United Kingdom was divided into twenty-six stations. In each of them a captain, assisted by a number of lieutenants, directed the operations of small press gangs, and in time of war possessed the right to seize the first comer and to dispatch him to serve in the Fleet either while the war lasted or for an indeterminate number of years.<sup>4</sup> The procedure was of dubious legality. All that the jurists could say in support of impressment was that, having been practised from time immemorial, it had become a part of the common law, the unwritten law of the realm, or that, although it had never been instituted by Statute, many statutes presupposed its existence, and that it was in consequence contained indirectly in the written or statute law.<sup>5</sup> But an attempt to have recourse to more regular methods proved unsuccessful. In imitation of Colbert, William III had sought to introduce a species of naval registration. Thirty thousand sailors enrolled in a Government register were to hold themselves, in return for certain privileges, in constant readiness to serve.

<sup>1</sup> Sea Service Supplies, 1793=20,000 seamen; additional=16,000 (not including 5,000, later 4,000 marines, soldiers employed in naval warfare, but not in the navigation of the vessels). 1812=113,600 seamen, exclusive of 31,400 marines (James, *Naval History* vol. i. p. 378; vol. vi. p. 494).

<sup>2</sup> 118,386 (Macpherson, *Ann. of Comm.*, vol. iv. p. 260).

<sup>3</sup> *Account of the number of vessels, with . . . the number of men and boys . . . which belonged to the several parts of the British Empire, on September 30th, in the years 1812, 1813, 1814.* The figures for 1812=165,030.

<sup>4</sup> In peace the power of impressment was submitted to certain restrictions. In the City the signature of the civil magistrate was necessary. To impress a fisherman required the formal sanction of two justices of the peace. Those engaged in the whale fishery of the North of Scotland were exempt while on their way to the fishing stations. Ferrymen were also exempted (Adolphus, *British Empire*, vol. ii. pp. 223 sqq. Brenton, *Naval History*, vol. i. pp. 50 sqq.). In time of war, however, an Act suspending these exceptions was usually passed. American War, 19 Geo. III, cap. 75. Napoleonic War, 38 Geo. III, cap. 46.

<sup>5</sup> Blackstone, 1 *Comm.* 918-19.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

These privileges comprised a small annual pension, a larger share of the prizes, a better chance of promotion and the guarantee of support for themselves and their families in case of sickness, incapacitation or old age. The Opposition protested, represented the registered as reduced, by the very fact of their registration, to a sort of legal slavery, and succeeded in obtaining the repeal of the statute.<sup>1</sup> The eighteenth-century Whigs preferred, as more in harmony with the spirit of a free constitution, the irregular method of the press to the bureaucratic order, temporarily introduced by William III. Once admitted, the press could be worked in two ways. The press officers could make it their object to carry off from the coast districts the men whom they considered the most likely to make good sailors. It was then that their tyranny assumed its most odious aspect, since the press gangs made choice of the men who were not only the strongest but also the most intelligent and of the best character, and tore them from their families. There occurred many a heart-rending scene when a sailor, just returned from a long voyage, was seized on the threshold of his father's home and carried off anew, never perhaps to behold his native village again. And bloody frays took place along the coast when the press gang was out. There were even actual battles with gunfire between the whale-fishers of the north and the vessels of the Admiralty, when the latter attempted to capture the whalers on board their fishing-boats. Or the press officers could employ another method, and in the endeavour to make their proceedings less unpopular, might endeavour a friendly understanding either with the captains of the Merchant Service or with the local authorities in the selection of men for the service of the State. In 1795 in every British port an embargo was laid on all English vessels, and the owners were obliged, each in proportion to the number of men in his employ, to furnish between them a total of 19,867 men. This also was impressment. But in this form it left the owners and captains of the Mercantile Marine free to select for the Navy the worst elements of their crews. At the same time in the towns the justices of the peace and other magistrates were called upon to surrender to the Admiralty, for service in the Navy, specified classes of

<sup>1</sup> 7 and 8 Will. III, cap. 21; 7 Anne, cap. 21.

## POLITICAL INSTITUTIONS

vagabonds and criminals. The Royal Navy thus became, as far as the large towns of the kingdom were concerned, a cheap convict station or prison. Whenever a strike broke out at a port among the crews of the merchantmen, the owners and the press officers soon arranged the removal and disappearance of the leaders.<sup>1</sup> The sailors obtained by these methods were not always the worst. The smugglers of the Kentish coast were in great request as pilots with the commanders of the British Navy. But, allowing for exceptions, crews thus recruited must as a general rule have been worth very little.

Moreover, even these sources were insufficient for the Admiralty. Still more men were needed, and since they could not be had at home, they were sought abroad. In 1793 Parliament suspended an article of the Navigation Act, which provided that the crews of English vessels should be entirely composed of Englishmen.<sup>2</sup> But it was not only for the Merchant Service, it was for the Royal Navy that sailors were drawn from every country under the sun. It was useless for the Directory to decree that every sailor not of British nationality who was captured on a British man-of-war should be put to death. The threat was childish, since the Directory never made any prisoners at sea. In 1796 Collingwood, while cruising off Toulon, captured on French vessels a number of Austrian deserters and prisoners, whom Massena was

<sup>1</sup> Whitbread denounced the abuse in the House of Commons (June 1, 1814): "Three men had been impressed as riotous persons, at the desire of some other persons. Thus was this power of impress, illegal and oppressive as it was in itself, perverted from its legitimate object." To this Croker replied: "The Admiralty was innocent. The execution of the impress warrants rested with the officers of ports only. . . . It was a favour to a master of a merchant ship, when the impress officers were obliged to take some men from his vessels, to allow him to choose those whom he would wish to remain" (*Parl. Deb.*, vol. xxvii. p. 1039). See, on the other hand, the *Newcastle Chronicle*, February 20, 1812: "Monday, near thirty riotous seamen were taken on the Tyne at Shields and lodged safe in His Majesty's ship *Transit*. The peace of this port has frequently been disturbed, under pretence of demanding more wages; but now positive orders are given by the Admiralty to the commanding officer here to impress such lawless hands and send them to the Nore."

<sup>2</sup> 33 Geo. III, cap. 26. An Act permitting three-fourths of the crews of merchantmen to consist of foreigners.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

taking from Genoa to Toulon. Massena had intended to make French soldiers of them, Collingwood turned them into British sailors. "In my ship's company," he wrote to a friend, "I have some of all the States in Germany—Austrians, Poles, Croats, and Hungarians—a motley tribe."<sup>1</sup>

When a little later the English complained that their sailors deserted to seek higher pay in the American Merchant Service, the Americans replied that an equal number of their citizens served in the British Navy. Collingwood, in 1807, admitted the truth of their statement.<sup>2</sup> Once more we may ask what could be the possible value in war of such a medley as this?<sup>3</sup>

In 1797, when the British Navy was on the eve of its most splendid victories, mutiny broke out in all the fleets. The disorders began in the Channel Fleet, then at anchor in Portsmouth harbour. The sailors had presented to Admiral Howe petitions demanding higher pay. When he refused they went on strike, for their mutiny can be termed by no other name. The strike lasted an entire month, from April 15th to May 14th, and completely paralysed the activity of the British Fleet off Brest and Cherbourg. On May 20th the North Sea Fleet at anchor near the mouth of the Thames mutinied, put the officers in irons, proclaimed a common sailor "President of the Floating Republic," blockaded the port of London, and did not surrender until June 20th. In July the infection spread to the fleet cruising

<sup>1</sup> Letter to J. E. Blackett, September 25, 1796 (*Life*, vol. i. pp. 43-4).

<sup>2</sup> Letter to Vice-Admiral Thornborough, October 18, 1807 (*Life*, vol. ii. p. 66). On quite a small number of ships there were, he reckoned, 217 American sailors.

<sup>3</sup> Once more recourse was had to the offer of bounties for those who would join voluntarily (Brenton, *Naval History*, vol. i. pp. 49, 168). But the scheme obtained a very poor success. See Brenton, *Naval History*, vol. i. p. 49 n.: "One of these wretched objects, on coming on board a ship of war with £70 bounty, was seized by a boatswain's mate, who, holding him up by the waistband of his trousers, humorously exclaimed: 'Here is a — that cost a guinea a pound.' There were few, if any, seamen among them; and the term 'quota-man' or 'lord mayor's man' was supposed to comprise everything that was base and contemptible among sailors."

## POLITICAL INSTITUTIONS

off Cadiz,<sup>1</sup> under the command of Sir John Jervis. Sir John occupied the crews with constant expeditions, and, while satisfying the just demands of the sailors, did not shrink from making examples of offenders. By these means he was able to prevent the mutiny from becoming universal, perhaps even the desertion of the fleet to the enemy. But the disorder continued for the next four years. In 1798 the crews of the *Pompey* and the *Neptune* mutinied, and were on the verge of surrendering the two vessels to the enemy. This actually happened the same year in the case of another vessel, the *Hermione* off Porto Rico, and in the following year a sloop carrying twenty cannon deserted off Brest.<sup>2</sup> In 1801 Lord St. Vincent has still to admit "the *deplorable state* of the discipline of the Navy."<sup>3</sup> When, after the Peace of Amiens, the British Government decided to send a fleet to the Barbadoes, the sailors, who had been expecting to be disbanded almost at once, proclaimed their dissatisfaction with the order and refused to start. Sixteen of the ringleaders were put to death.<sup>4</sup>

But such stern repression appears to have been altogether the exception in the history of the British Navy. Numerous were the concessions made to appease the mutinous spirit of the sailors. All the demands of the Portsmouth mutineers were granted and not a man punished. The mutiny of the North Sea Fleet was certainly repressed more sternly. It was one of those second insurrections by which governments are not taken unawares. And in such cases the government is apt to make the leaders of the second mutiny atone for its feebleness in dealing with the first. Nevertheless, even then, the Cabinet was obviously anxious to punish as few

<sup>1</sup> Collingwood, Letter to J. E. Blackett, June 27, 1797: ". . . The seamen, I am persuaded, would never have revolted from good order; but consider, with such a fleet as we have now, how large a portion of the crews of the ships are miscreants of every description, and capable of every crime; and when these predominate, what evils may we not dread from the demoniac councils, and influence of such a mass of mischief?" (*Life*, vol. i. p. 63).

<sup>2</sup> Brenton, *Naval History*, vol. ii. pp. 286, 435 sqq. Chevalier, *Marine fran aise*, vol. iv. p. 24.

<sup>3</sup> Brenton, *Life of St. Vincent*, vol. ii. p. 56.

<sup>4</sup> Brenton, *Naval History*, vol. ii. pp. 559 sqq.; *Life of Lord St. Vincent*, vol. ii. pp. 100-2; *Diary of Lord Colchester*, vol. i. pp. 396 sqq.; Pellew, *Life of Lord Sidmouth*, vol. i. p. 363.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

as possible. And those who were condemned to imprisonment were pardoned on the first opportunity.<sup>1</sup> Nor did the mutinous fleet forfeit any of the concessions already obtained for all sailors by the Portsmouth mutineers. Henceforward the crews received a larger share of the prizes. The pay of the petty officers and of the first-class sailors was raised by 5s. 6d. a month, that of the second-class sailors by 4s. 6d. In 1806, the Fox-Grenville Ministry granted a further increase, 5s. for petty officers, 4s. for first-class sailors, 2s. for the other sailors.<sup>2</sup> Sir John Jervis, Lord St. Vincent since his great victory in 1797, reformed and mitigated naval discipline; he took care that the men were properly fed, and provided for the first time a special cabin for the sick.<sup>3</sup> Though corporal punishment was not abolished, the best admirals, such as Nelson and Collingwood, employed it as seldom as possible. Sometimes during a whole year not a single sailor was flogged on board their fleets.<sup>4</sup> The following incident will sufficiently prove the anxiety of the Admiralty to show its care for the common sailors. In 1812 a naval lieutenant in command of a sloop killed, in a fit of rage, an infantry sergeant of the marines who had been guilty of insubordination. He was condemned to death and executed. Nor was he even shot; he was hanged like a common murderer.<sup>5</sup>

Were these attempts to conciliate the feeling of the crews successful? Undoubtedly they enjoyed a measure of success. After 1801 the British Navy witnessed no more mutinies on a large scale. All the same the *moral* of the sailors continued to be far from satisfactory. In 1810 Admiral Patten accused the sailors of being "in the habit of deeming both mutiny and desertion as privileges attached to their situation." He complained also that the warrant officers were "men of inferior or doubtful characters, who encourage mutiny, wink at desertion, and sometimes join the seamen in both these

<sup>1</sup> Brenton, *Naval History*, vol. ii. p. 119.

<sup>2</sup> Clowes, *Royal Navy*, vol. iv. p. 171. H. of C., April 25, 1806 (*Parl. Deb.*, vol. vi. p. 908).

<sup>3</sup> Brenton, *Life of St. Vincent*, vol. i. p. 342.

<sup>4</sup> *Life of Collingwood*, vol. i. pp. 68, 78.

<sup>5</sup> The condemned had been recommended by the court martial to the mercy of the Government. It was nevertheless decided to proceed with the execution (Brenton, *Naval History*, vol. iv. p. 15).

## POLITICAL INSTITUTIONS

alarming transgressions."<sup>1</sup> The community of speech rendered it peculiarly easy for English deserters to be naturalized as citizens of the United States. This gave rise to a series of diplomatic representations which finally led to a war between England and America. Never had the methods of recruiting for the Navy been the object of sharper criticism than during the years immediately preceding 1815.<sup>2</sup>

### *The Officers.*

If the sources from which the crews were drawn, and, in consequence, their discipline left so much to be desired, did the peculiar excellence of their officers compensate for these defects in the organization of the Navy? So the English believed, and their belief was in many respects well founded. Though, generally speaking, to become a naval officer a man must belong to the governing classes of the country, the aristocracy or the gentry, the rule was not absolute. To become a midshipman gentle birth was not essential, nor even wealth, provided the consent of a commander were obtained.<sup>3</sup> A little boy, fourteen or fifteen, sometimes only eleven years old, would be entrusted by a parent to a friend who was in command of a frigate or of a ship of the line. On board, under his master's supervision, he would learn at the same time both the theory and the practice of his profession. He would serve for four years as landman or able volunteer, for two years as midshipman or master's mate,

<sup>1</sup> *The Natural Defence of an Insular Empire*, quoted in the *Quarterly Review*, in the article above mentioned, vol. iv. pp. 329, 331. For other criticisms see Miss Edgeworth, *Patronage*, chap. xxiii.—H. of C., March 18, 1824; G. W. Butler's petition, speeches of Hume and Sykes (*Parl. Deb.*, New Series, vol. x. p. 1220).—*Editorial Review*, October 1824, Art. 8, *Abolition of Impressment* (vol. xli. pp. 151 sqq.).

<sup>2</sup> H. of C., April 24, 1815. Whitbread's speech (*Parl. Deb.*, vol. xxx. p. 812).

<sup>3</sup> An Order in Council had even laid down the conditions under which a quartermaster or a pilot could become a lieutenant without passing through the rank of midshipman (Adolphus, *British Empire*, vol. ii. p. 233). And a certain Captain Coghlan, who belonged to the Merchant Service before he joined the Navy, who was at once given the honorary rank of captain (Brenton, *Naval History*, vol. ii. p. 510; vol. v. p. 100).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

and at the end of the six years would be ready to pass his examination for lieutenant. Formerly it had been the practice to postpone the moment of embarkation by a convenient fiction. At the age of eleven or twelve, the child's name was entered in the ship's log-book, but the registration was a mere form, and two or three years would pass before he actually joined the ship.<sup>1</sup> But such practices had been entirely given up, and about 1815 the ablest commanders were beginning to regard with disfavour both the excessively early age at which for so many children life on board began, and the insufficiency of their theoretical attainments for the position of a naval officer.<sup>2</sup> Some of these midshipmen took a dislike to the life and left the Navy for the Army.<sup>3</sup> Those who remained were proud to contrast the difficulties of the earlier stages of their career with the ease with which commissions in the Army could be obtained by influence or wealth.

At the age of nineteen, the midshipman passed his examination for a lieutenancy. He could then be promoted, either by seniority after ten years' service, or as the reward of some brilliant exploit after at least two years' service, to be captain of a sloop. A year later he might perhaps be made a post-captain, in command of a frigate or ship of the line. The next stage was the command of a squadron. After this, if he showed the capacity, he might become commodore, and then

<sup>1</sup> Brenton, *British Navy*, vol. i. pp. 79-80.

<sup>2</sup> Collingwood, *Life*, vol. i. pp. 100, 120; vol. ii. p. 240.

<sup>3</sup> Campbell, *Lives of the Chancellors*, vol. vi. p. 377; *Journal of Lady Holland*, vol. ii. p. 259. It was only the want of means that kept Thomas Erskine in the Navy (Campbell, *ibid.*, p. 373).

" . . . My second objection is, that I would be obliged to keep company with a most abandoned set of people that would corrupt my morals; whereas in the Army, though they be bad enough, yet I should have the advantage of choosing my company where I pleased, without being constrained to any particular set." But in order to enter the Army he would have been obliged to purchase a commission, and for that reason alone, he joined the Navy. For the difficulties which the midshipman found in living on his scanty pay which was, moreover, only due at intervals of six months, see *A Letter . . . on the . . . Condition of Officers in the Royal Navy*, by a Post-Captain, 1811, pp. 8-10. This little work was published by the author as a supplement to the work published in the preceding year by Admiral Patten, which dealt with the condition of the common sailors.

## POLITICAL INSTITUTIONS

in turn rear-admiral, vice-admiral, admiral, finally perhaps admiral of the entire fleet. These positions were the object of keen competition; but the duties were peculiarly onerous.

It was not enough for the commander of a squadron to be an able strategist, a good tactician. Ruling, as he did, a small floating city, which might perhaps comprise ten or even twenty thousand souls, he had need to prove himself a statesman. He must be able to secure obedience from the sailors and harmony among the officers of all ranks. He must provide for the maintenance of all under his command, and must therefore be able to determine beforehand when and where the crews should disembark to revictual the ships with fresh meat and water. It was his duty, moreover, to treat, as the representative of his fleet and nation, with the governments of the countries off whose shores he was cruising—allied governments, hostile governments, neutral governments, and, most of all, governments that waited on the vicissitudes of war and revolution and became friendly and hostile in turn, between one cruise and the next. Sometimes the home authorities invested an admiral with the powers of a plenipotentiary; but he was always obliged to play the part of a diplomatist. Lord Collingwood, who commanded in the Mediterranean, had not only to blockade the port of Toulon and to protect the Sicilian coasts; he had also to conduct negotiations with the Sultan of Morocco, the Bey of Algiers and the Bey of Tunis, and on his own responsibility to treat with them as the representative at once of his squadron, of the Court of St. James and the Court of Palermo.

So long as Spain remained hostile, he must take care, while fighting her, to spare her as much as possible in the hope of detaching her sooner or later from the French alliance. It was for him to decide, without waiting for orders from London, what should be the attitude of his fleet to the Porte. At one time he must enter into friendly negotiations with the Sultan, at another he must send ships to bombard him.<sup>1</sup> Sir James Saumarez, the commander of the Baltic Fleet, earned the thanks of the nation not only by the number of hostile convoys that he intercepted, but also by the skill with which, after Sweden had joined the Napoleonic League and England no longer possessed a single friend in the Baltic

<sup>1</sup> Mahan, *Types*, pp. 424-5.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

he had succeeded in maintaining good relations with that country, in continuing to revictual in Swedish ports and in paving the way, by his diplomacy, for the defection of Bernadotte.<sup>1</sup>

Such hard work deserved its pay. The admiral of the fleet received up to £1,800 a year, an admiral £1,260, a vice-admiral £880, a rear-admiral £630. An admiral or vice-admiral, when holding the chief command, received in addition 20s. a day for table expenses.<sup>2</sup> But to obtain a correct idea of the sums actually received by the commander of a squadron, we must add to this fixed remuneration the enormous emoluments derived from occasional sources, from prizes captured from the enemy, whether from men-of-war or merchantmen. A quarter of the prize went to the crew of the ships which had effected the capture, a quarter to the midshipmen, the mates and other petty officers, an eighth to the lieutenants and masters. This left three-eighths for the captain, but if the vessel formed part of a squadron, the admiral had a right to one of these three-eighths.<sup>3</sup> This was, of course, a very unreliable source of income, and the prizes by no means always corresponded with the importance of the victories won. During the closing years of the 18th century a naval officer might make his fortune in a day, if he happened to meet a Spanish vessel laden with gold from the mines of America.<sup>4</sup> The Battle of Trafalgar, on the other hand, brought the victors nothing.<sup>5</sup> The sharing of

<sup>1</sup> Mahan, *Types*, pp. 424-5.

<sup>2</sup> Adolphus, *British Empire*, vol. ii. pp. 228-9, gives the rate of pay per diem. The figures given above were obtained by multiplying his figures by 360.

<sup>3</sup> *Ibid.*, vol. ii. p. 241.

<sup>4</sup> In 1793 the *San Iago*, which was carrying £25,000,000 in specie, yielded £50,000 to Lord Hood, and £30,000 to each of the captains of the squadron (Brenton, *Naval History*, vol. i. pp. 193-4). When in 1799 two Spanish frigates were captured off Cape Finisterre, every captain received over £40,000, every lieutenant over £5,000, every warrant officer close on £2,500, and the midshipmen and petty officers were left with £800 to divide amongst them, and the common sailors with £200 (Brenton, *Naval History*, vol. ii. pp. 381-2).

<sup>5</sup> Collingwood, *Letter to Lady Collingwood*, October 25, 1806: "They have used us shabbily about that whole business; for the poor seamen who fought a battle that set all England in an uproar

## POLITICAL INSTITUTIONS

prize money was, moreover, a highly contentious business and gave rise to innumerable squabbles. These were in the first instance disputes with the Admiralty;<sup>1</sup> for the proceeds of the sale of enemy ships, captured before the declaration of war, but on which an embargo had been laid, belonged to the Admiralty. And this raised the question whether or no war had been declared previous to the capture of a particular vessel. Again, men-of-war which had been taken by the enemy and afterwards regained were also prizes of the Admiralty and not of the crew of the ship that had made the capture. Suppose, then, an English ship after her capture by the enemy had been refitted and completely transformed in a French port. If she should subsequently be recaptured, ought she to be regarded as a new vessel to which the Admiralty had no claim?<sup>2</sup> Then there were disputes among the officers. Suppose an admiral who had captured a convoy had detached two or three ships from his fleet a few hours before the engagement. Were the officers in command of these vessels to blame for the ill-timed order? Did they not belong to the squadron? Had they not therefore a right to a share of the prize?<sup>3</sup> For five years Nelson and Lord St. Vincent were at law with each other over a claim to the sum of £3,000, the commander's portion of prizes made in 1799 by Lord St. Vincent's fleet after his departure for England.<sup>4</sup>

As a further inducement to good service, and also as some compensation to officers still poor after brilliant victories,

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and all the poets and painters at work, have not at this moment received one sixpence of prize money" (*Life*, vol. i. pp. 338-9). Cf. Clarke and MacArthur, *Life of Nelson*, vol. i. p. 132. Letter of Nelson to his wife after the capture of Toulon: "I believe the world is convinced that no conquests of importance can be made without us; and yet, as soon as we have accomplished the service we are ordered on, we are neglected. If Parliament does not grant something to this fleet, our Jacks will grumble; for here there is no prize money to soften their hardships; all we get is honour and salt beef."

<sup>1</sup> Brenton, *Naval History*, vol. iv. p. 41.

<sup>2</sup> See the case of the *Castor*, 1793 (Brenton, *Naval History*, vol. i. pp. 362-3).

<sup>3</sup> The case was called in legal terminology one of "constructive assistance" (Brenton, *Naval History*, vol. ii. pp. 400-1).

<sup>4</sup> Pettigrew, *Life of Nelson*, vol. ii. p. 271.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the Government had in reserve titles of nobility, honours of all kinds, commemorative medals, military decorations. The Order of the Bath, which in 1815 comprised only a very small body of knights, was a much-coveted distinction. The rules which governed the grant of titles had been clearly fixed by custom. A captain who in obedience to orders performed some striking feat received a knighthood. A commander of a squadron who had shown originality in his interpretation of the admiral's orders, and whose initiative had led to a decisive success, or who had taken a subordinate part in winning an important victory, was made a baronet.<sup>1</sup> An admiral, a vice-admiral, even a rear-admiral might aspire to a peerage. If the new peer were poor, a pension would be conferred upon him, to enable him to keep up his position. From the list of the higher naval officers, who received a peerage during the reign of George III, we are able to form a sufficiently accurate idea of the classes from which the commanders of the British Navy were drawn. Three of these new peers were younger sons of great houses, and three were of good family—two of the latter, Lord Collingwood and Lord Duncan, from the landed gentry. Two were the sons of soldiers who had never risen to the rank of colonel. Two were sons of poor barristers. Nelson and the two Hoods were sons of clergymen. Lord Exmouth was of quite humble origin. His father had been in command of a mail boat in Dover harbour.<sup>2</sup>

The organization, therefore, of the naval command, theoretically at least, would seem to have been as excellent as the methods employed by the British Government to obtain crews were defective. The apprenticeship to the profession was difficult, promotion open to merit, and the career could lead to the highest dignities of the realm. But we must not forget that the conditions under which promotion

<sup>1</sup> See a curious letter from Lord St. Vincent to Lord Spencer, March 7, 1799 (Brenton, *Life*, vol. ii. pp. 348-9).

<sup>2</sup> We must not regard as a naval peerage the title of Baron Pierrepont and Viscount Newark, conferred in 1796 on Charles Herbert Pierrepont, M.P. for the county of Nottingham, and formerly a Port Captain. But if, to the fifteen naval peerages of England, we add five peerages of Ireland, we shall find that four out of these new Irish peers belonged to great families; only one, Lord Shuldharn, was the son of a clergyman.

## POLITICAL INSTITUTIONS

was given in the Navy were a source of constant complaints, quarrels and insubordination among the officers. Whig ideas had always prevailed in the British Navy. Naval men maintained that, while the land army belonged to the King, the fleet was essentially a constitutional and a parliamentary force. When, some years earlier, the Government had placed a crown above the anchor on the naval ensigns, the change is said to have been resented as an insult.<sup>1</sup> The two leaders of the most advanced democrats, Lord Cochrane, himself a rear-admiral, and his friend, Sir Francis Burdett, bombarded the House of Commons with the grievances of the naval officers.<sup>2</sup> Seamen have an instinctive distrust of ministries and public offices, of the interference of the incompetent land lubber in naval business. And now that the Government seemed settled in Tory hands, the traditional Whiggery of the Fleet became all the stronger. The sailors well knew the influence exerted by electioneering considerations on the choice of pilots at Dover. This was, they alleged, the reason why so many ships were lost at sea or taken by the enemy.<sup>3</sup> They complained that the same

<sup>1</sup> Moore relates this in his Diary (November 28, 1818), on Tierney's authority, without, however, guaranteeing its truth. He goes on: "The Prince, at one time, thought of giving red waistcoats and breeches to the Navy; at another time he is reported to have said, upon some consultation for a change of their costume: 'D——n them; dress them now how you will, you cannot make them look like gentlemen.'"

<sup>2</sup> H. of C., July 10, 1807. Lord Cochrane's speech (*Parl. Deb.*, vol. ix. pp. 754 sqq.).

<sup>3</sup> Lord St. Vincent, Letter to John Robinson, Esq., March 30, 1801 (Brenton, *Life*, vol. ii. p. 61). Lord John Russell, *English Government*, 1823 ed., p. 416. "The Navy, being under the direction of a Cabinet Minister, is not so purely conducted [as the Army under a Prince of the Royal Family]. Many an officer owes his advance, many a civil servant his place, to an election interest."—Sir Charles Napier, *The Navy*, pp. 22-4. *An Enquiry into the . . . state of . . . the Navy, by an Englishman*, pp. 23 sqq., and 44-5: "The whole number of post-captains who compose the present list amounts to about 840: of these I estimate about 450 to have attained their rank from merit and long service, leaving 390 who, I really believe, have risen purely by private patronage and borough interest." But we must not imagine that these nominations through influence were of a nature to render the body of naval officers more aristocratic. Their effect was quite the contrary, when the nominations were inspired by electioneering considerations. "It is no

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

influences affected promotions, and agreed with Lord Collingwood that "a hole or two in the skin will not weigh against a vote in Parliament."<sup>1</sup> If the rules of seniority were strictly observed, the sailors ascribed it to the desire to encourage among young men of good family the notion that they had a right to rapid promotion without having to work for it.<sup>2</sup> If, on the other hand, the rules of seniority were broken, they were ready with the cry of favouritism, of arbitrary preference.

When in 1798 Nelson received the command of the Mediterranean Fleet, nothing short of a mutiny among the officers was the result. The malcontents were led by two in high command, Sir William Parker and Sir John Orde, who considered that their rights had been violated.<sup>3</sup> At the same time, Lord St. Vincent on the Atlantic was bewailing the insubordination which prevailed throughout his fleet: "Mutinous spirits among the lower orders, and factious discontents in a few of the higher."<sup>4</sup> He was obliged to maintain his authority against simultaneous attack from both quarters, and in another letter written shortly afterwards he ascribed the insubordination of the crews "entirely" to "the licentiousness of the officers."<sup>5</sup> Later on Nelson himself

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disgrace," continues our writer, "to the post-captains of the English Navy, who have many lords amongst them, that these are also the worthy offspring of tailors, shoemakers, farmers, ale-house keepers, sailors, pilots, haberdashers, drapers, milliners, and in fact every calling under the sun."

<sup>1</sup> Lord Collingwood, *Letter to Captain Clavell*, October 20, 1809 (*Mem. and Corr.*, 1828, p. 483).

<sup>2</sup> Brenton, *Life of St. Vincent*, vol. ii. p. 60; *Life of Collingwood*, vol. ii. pp. 313, 333.

<sup>3</sup> See a long letter from Collingwood in Brenton, *Life of St. Vincent*, vol. i. pp. 425-6.

<sup>4</sup> Letter to Lady Spencer, December 27, 1798 (Brenton, *Life*, vol. i., pp. 369-370).

<sup>5</sup> Letter to A. MacDonald, May 16, 1801 (Brenton, *Life*, vol. ii. p. 665). Cf. Letter to the Marquis of Clanricarde, *ibid.*, pp. 66, 67. Cf. also a letter written later to Rear-Admiral Markham, April 9, 1801 (*Life*, vol. ii. pp. 256-7): "My opinion has long been that the supplies of fresh beef have been too frequent; but a discontinuance under me would produce a clamour among the officers, from whence all our evils have originated, and you well know how soon seditious expressions are conveyed from the ward-room to the gun-deck."

## POLITICAL INSTITUTIONS

took offence before Alexandria at the bestowal of an independent command upon Sir Sidney Smith, the personal friend of Pitt. Three years afterwards, he feigned indisposition because he was ordered to serve under the aged Sir Hyde Parker, whose promotion he attributed to political influence. In 1804 similar bickerings took place in the Pacific between Sir Edward Pellew and Sir Thomas Troubridge.<sup>1</sup> In 1811 a letter from Rear-Admiral Fremantle to the Marquis of Buckingham reveals the entire fleet in open revolt against Admiral Cotton, and awaiting impatiently the change of Cabinet which would replace him by another admiral.<sup>2</sup>

These complaints of the officers were not, however, always justified. Surely we cannot blame the Government for sending Nelson in 1798 to win the Battle of Aboukir. On the contrary, the impartiality displayed by the Admiralty on many occasions is quite remarkable. We find, for instance, in 1794 Sir John Jervis and Sir Charles Grey, both influential Whigs, entrusted by Pitt with the command of the expedition sent against the French Colonies in the West Indies. Again, in 1809 an important command was given to Lord Cochrane, the demagogue. But, whether justified or no, the lack of discipline among the officers was undeniable. Never was it displayed more undisguisedly than after the victory of the Aix Ronds in 1809. Rear-Admiral Eliab Harvey, who was second-in-command, inveighed openly on the bridge of the admiral's ship against the commander-in-chief, Lord Gambier. The latter was obliged to bring him before a court martial and deprive him of his command. Lord Cochrane, to whose fireships the victory was chiefly due, now came forward to accuse Lord Gambier of allowing the remnants of the French Fleet, by the slowness of his movements, time to take refuge in the Charente. On his return to London he declared himself prepared, should a vote of thanks to Lord Gambier be moved in Parliament, to vote and speak, as a Member of the House, in opposition to the notion. To clear himself in the eyes of the public Lord Gambier was forced to demand a trial by court martial. There was no law to prevent an

<sup>1</sup> Osler, *Life of Admiral Viscount Exmouth*, pp. 218 sqq.

<sup>2</sup> *Court of England under the Prince Regent*, vol. ii. pp. 54-5. Letter of March 1, 1811.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

officer on active service taking his seat in Parliament. In 1815 the House of Commons contained ten naval officers, including an admiral, three vice-admirals and three rear-admirals. Naval officers were thus enabled, between cruises, to make the nation witness of their quarrels.<sup>1</sup> Despite the Tory reaction, the British Navy had kept the traditional independence and insubordination, whose manifestations were so astonishing to the Continental observer.

One further touch remains to complete our picture of the spirit prevalent in the British Navy. One of the grievances put forward by the mutineers of the North Sea Fleet was "That they were not allowed to keep the Sabbath day holy, and that the fiddler had been ordered or permitted to play to them on Sunday."<sup>2</sup> Their ringleader, Richard Parker, on his condemnation to death, presented the Fleet with the spectacle of an edifying end. At his execution he drank a glass of wine, saying, as he drank it, "I drink first to the salvation of my soul and next to the forgiveness of my enemies," and then knelt in prayer.<sup>3</sup> When Nelson had given his orders on the morning of the Battle of Trafalgar, he retired into his cabin and composed the following prayer: "May the great God, whom I worship, grant my country, and for the benefit of Europe in general, a great and glorious victory. . . . Amen. Amen. Amen."<sup>4</sup> Very different would have been the language and deaths of French mutineers at Brest or Toulon. Napoleon and his generals did not prepare for battle in this way. For the last fifty years a powerful movement of religious enthusiasm had been stirring the public mind to its depths. Perhaps this

<sup>1</sup> The admirals took umbrage at this, and while by no means disposed to sacrifice their own privileges, demanded that they should not be allowed to ordinary captains. See St. Vincent's letter to Lord Howick, October 18, 1806 (Brenton, *Life*, vol. ii. pp. 316-17): "If you will, my good lord, bring a Bill into Parliament to disqualify any officer under the rank of rear-admiral to sit in the House of Commons, the Navy may be preserved; but, while a little drunken, worthless jackanapes is permitted to hold the seditious language he has done, in the presence of flag officers of rank, you will require a man of greater health and vigour than I possess to command your fleets."

<sup>2</sup> Brenton, *Naval History*, vol. i. p. 425, ed. 1823, p. 284, 1836.

<sup>3</sup> *Ibid.*, vol. i. p. 442, ed. 1823, p. 296, 1836.

<sup>4</sup> Brenton, *Naval History*, vol. iii. p. 448, ed. 1823.

## POLITICAL INSTITUTIONS

unanimity of religious sentiment, this feeling of reverence and fear of God, had already begun to modify the insubordinate temper of the sailors. But we witness as yet only the first symptoms of the new spirit. The English fleets about the year 1800 still represented the old England of the 18th century, riotous and insubordinate. The ships that won the day at Camperdown, Cape St. Vincent and Aboukir were commanded by undisciplined officers, and manned by mutinous crews. Nevertheless, the British Fleet, in spite of its disunion, proved overwhelmingly superior to the fleets of the enemy. In the hour of battle, admirals, officers and men were reconciled and swooped down upon the enemy's ships "like a falcon on her prey." Why was this? What was the secret of their strength? It was that they had the country behind them, and they knew it.<sup>1</sup>

### *The Navy and Public Opinion.*

In France the national territory had been threatened on the Eastern frontier. Since Valmy, it had been in this quarter that the soldiers knew there were laurels for the winning and dangers worth the daring. All the while the French sailors felt themselves forgotten on board their ships, neglected by the public, left as though to languish in exile. In the minds of their fellow-countrymen they were an altogether secondary force. They displayed in consequence a second-rate *moral*. The British public had, on the contrary, been accustomed for a century past to regard the sea as the source of England's wealth and greatness. As we have seen, it is a mistake to suppose that because the Mercantile Marine of Great Britain was of such importance, it furnished a ready supply of sailors to the Royal Navy. The importance of the Merchant Service did, however, familiarize Englishmen with the sea. For them the sea had no terrors—only attraction. It was, moreover, the sea that separated the United Kingdom from the rest of the world, and constituted the national frontier. England was a besieged country on whose ramparts the sailors

<sup>1</sup> Collingwood, letter to his wife, February 17, 1797 (*Life*, vol. i. p. 47).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

mounted guard. All eyes were fixed upon them. Unable to endanger the Constitution of the Realm, they secured the prosperity, the safety, the very existence of the nation. Jack Tar, with his peculiar three-coloured dress, his wide breeches, his flowing jacket, his hair hanging in pigtailed down his neck, was the popular hero; and his warlike ardour naturally grew with the enthusiasm he inspired.

The truth of the foregoing observations may be confirmed from a different point of view. We have only to consider the events of the last ten years of the war. Napoleon had realized that he could never hope to inspire French sailors with the enthusiasm which possessed his soldiers. He devised accordingly a new naval strategy, better suited to the timidity of his captains and their crews. Henceforward, the French vessels should remain in the ports, always in great number, always apparently on the verge of sailing. They would thus, while carefully avoiding an engagement, compel the British Fleet to keep a constant watch off Antwerp, Brest, Rochefort, and Toulon. The British ships were left to rot on the open sea, while their crews were demoralized by inaction. Nelson, a stern commander, dull and commonplace everywhere save on the poop of his vessel, a born leader and fighter, had been the hero of the first period of the war. The melancholy and conscientious Collingwood, condemned to constant wandering over lonely seas, without the joy or even the hope of victory, and succumbing at last to the weary burden seven years after he had left his native land, was the hero of the second period. And Napoleon's new strategy proved up to a certain point successful. The British Fleet, reduced to inactivity, lost thereby some of its former popularity, and with it some of its old fighting spirit. "It is not the fashion for young men to be seamen now," wrote Collingwood regretfully.<sup>1</sup> The sailors, conscious that the favour of the public was passing from them, became embittered and discontented. They contrasted their scanty pay and small pensions with the enormous incomes with which politicians satisfied their greed.<sup>2</sup> Bitterly they compared

<sup>1</sup> Letter to Lord Radstock, April 13, 1807 (*Mem. and Corr.*, ed. 1823, p. 248).

<sup>2</sup> H. of C., May 11, 1810. Lord Cochrane's speech (*Parl. Deb.*, vol. xiv. pp. 1006 sqq.).

## POLITICAL INSTITUTIONS

their lot with that of the officers in the Army. Why, they asked, had only one peerage been granted to a sailor since 1807? After Waterloo a democratic innovation had been made, and a commemorative medal been given to all who took part in the battle—to the common soldiers as well as to the officers. Why, queried the sailors, had not the Government thought of this before, when the conquerors of Trafalgar were to be rewarded?<sup>1</sup> In 1816 a Member of Parliament, who persisted in bringing before the House the grievances of the naval officers, was scarcely granted a hearing and his voice was drowned by a babel of conversation.<sup>2</sup> The prestige of the Navy had suffered an eclipse.<sup>3</sup> Nelson had belonged to the already distant age of Pitt and Fox, Wellington was now the national hero. When in 1812 war with America broke out, the British crews fought badly, and suffered a series of defeats which, although of no real importance, were ridiculous and humiliating. Meanwhile the army in Spain was winning victory after victory.

### THE ARMY

#### *The Anti-Militarist Tradition in England.*

"To render the executive sovereign incapable of tyranny," wrote Montesquieu, "the armies entrusted to him should consist of citizens, and should be of the same mind as their fellow-citizens, as was the case at Rome down to the time of Marius. There are but two possible means to obtain this. Either those who serve in the Army should possess sufficient wealth to pledge their good conduct towards the other citizens, and should be enlisted for a year only, as was done at Rome, or if there be a standing army, and the soldiers be drawn from the worst order of the people, the legislature must possess the authority to disband the forces at pleasure, and

<sup>1</sup> Brenton, *Naval History*, vol. iv. pp. 496-7.

<sup>2</sup> H. of C., March 29, 1816. Forbes's speech (*Parl. Deb.*, vol. xxxii. pp. 735 sqq.).

<sup>3</sup> For an expression of this discontent and for the complaints of the commercial ports that merchantmen were insufficiently protected against the American Navy, see *An Enquiry into the . . . state of the . . . Navy, by an Englishman*, pp. 39 sqq.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the soldiers must dwell with the civilians, having no separate camps, barracks or forts."<sup>1</sup> Blackstone, in his *Commentaries*, reproduces Montesquieu's language almost verbally.<sup>2</sup> Indeed, the problem stated by Montesquieu was the very problem which confronted the English Parliament throughout the 18th century. How could an anti-militarist party, indeed an anti-militarist nation, maintain a standing army without ceasing to be anti-militarist? There is nothing to show that Montesquieu had England in his mind when he put forward the former of his two expedients, and suggested an army composed of propertied men with a personal stake in the preservation of public liberty, and enlisted only for a very short period. Nevertheless, the English "militia," as it had been termed since the 17th century, corresponded in many respects to this description. It was neither a professional nor a standing army, nor was it separate from the rest of the nation. In its modern form, its organization rested on two statutes passed shortly after the Restoration.<sup>3</sup> The supreme command belonged to the King, but he could not call out the militia for service overseas. The King appointed the lord-lieutenants, who commanded the militia of each county, but it was the lord-lieutenants, not the King, who appointed the subordinate officers. Every one possessing an annual income of £500 from real or of £600 from personal estate was obliged to furnish a cavalryman and his horse. Every one with an income of £50 from real or £60 from personal estate was obliged to furnish an infantryman. The manœuvres did not exceed fifteen days a year. There were no special courts or code for the punishment of crimes and breaches of discipline committed in the militia during this period.<sup>4</sup> In course of time new statutes were enacted, which sometimes increased, but at others diminished the Royal Prerogative in respect of the militia.

This prerogative would, indeed, have been practically abolished, had not a Bill which passed the Commons in

<sup>1</sup> *Esprit des Lois*, Book II, chap. vi.

<sup>2</sup> 1 Comm. 413-14.

<sup>3</sup> 13 Car. II, cap. 6. An Act declaring the sole right of the militia to be in the King, and for the better ordering and disposing the same. 13 and 14 Car. II, cap. 3. An Act for ordering the forces in the several counties of this kingdom.

<sup>4</sup> 30 Geo. II, cap. 25.

## POLITICAL INSTITUTIONS

1756 been thrown out by the Lords. It was, on the contrary, markedly strengthened by the important Act of 1757.<sup>1</sup> This Act provided that in each county a list should be drawn up of all capable of bearing arms. The number of militiamen to be furnished by each county should be fixed yearly by law. Those who must actually serve should be designated by ballot, but those drawn should be allowed to pay a substitute. Henceforward the Crown should nominate not only the lord-lieutenants but also the adjutants and sergeants, and was to possess a veto on the nomination of any officer whatsoever. All this was so much gain for the Royal Prerogative. And moreover, for the first time the militia when under arms was now subjected to the jurisdiction of courts martial. But we must not overlook the fact that another provision of this very statute counterbalanced all that was unduly favourable to the prerogative in its other articles. A colonel must possess an income derived from real estate of at least £400 a year, a lieutenant-colonel or major must possess £300 a year from the same source, a captain £200, a lieutenant £100, an ensign £50<sup>2</sup>. Thus the hierarchy of rank in the local militia was made to reproduce exactly the social hierarchy of the county landowners. The organization of the militia was essentially the application to the military sphere of the system of the Justices of the Peace. And in fact the body of officers were chosen from the upper classes by cooptation, a cooptation controlled by lord-lieutenants who were in practice irremovable. Certainly the militia was no democratic institution, but still less was it royalist. At the accession of George III it was still what it had been at the time of the downfall of the Stuarts—the army of the nation in opposition to the standing army, the army of the King. “The circumstance,” declared Wilberforce, “which

<sup>1</sup> 30 Geo. II, cap. 25.

<sup>2</sup> The great consolidating Militia Act of 1786 (26 Geo. III, cap. 107, § 5) altered this scale of incomes. For colonels and lieutenant-colonels the qualifying income was raised respectively to £1,000 and £600, for majors and captains it was fixed at £200. In the case of lieutenants and ensigns the income demanded was lowered to £50 and £20 respectively, and those two inferior grades were thrown open to persons with only personal estate if their income amounted to £1,000 a year for a lieutenant, or £500 a year for an ensign.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

rendered our militia so dear to us, as a constitutional force, was its being officered by country gentlemen—men of property, of family, of domestic connections, of personal influence, whose arms were in no conjuncture likely to be turned against their country.”<sup>1</sup>

It was, nevertheless, impossible that a State which desired to interfere in European politics, to dispatch expeditions to the Continent, to acquire colonies, could be content with nothing more than a militia. Moreover, the very organization of the militia presupposed an agricultural nation, consisting of landed proprietors great and small, and their tenants. How could such a system survive the industrial revolution, in the course of which vast urban centres grew up all over the land—towns where the traditional grades of rural society were blurred, indeed destroyed? We must add that the popular anti-militarism of the English rendered the satisfactory execution of the Militia Acts very difficult. The quasi-conscription established by the Act of 1757 aroused keen discontent, widespread complaints, even the beginnings of revolt. Large numbers of those drawn by the ballot availed themselves of the permission granted by the Act to purchase a substitute; but we can hardly call a militia of paid substitutes in any true sense a militia. A force of this kind, so far as the common soldiers were concerned, was a professional army; the sole difference being that their services, instead of being bought by the State, had been bought by private individuals chosen at haphazard, and the cost therefore did not appear in the budget.

In their hatred of bureaucracy, eighteenth-century Englishmen refused to fulfil the conditions under which alone they would have been able to form a citizen army. Whig England was therefore compelled to establish a standing army. Parliament resigned itself to the inevitable, and confined its efforts to the diminution of an evil recognized as necessary, by the application of the principles formulated by Montesquieu in the passage quoted above. The Mutiny Act, renewed each year, fixed the number of men whom the executive would have the right to maintain under arms. The figure thus fixed was a maximum, which might not be exceeded, though it need not be reached. The legal maximum had always been

<sup>1</sup> H. of C., June 19, 1798 (*Parl. Hist.*, vol. xxxiii. p. 1508).

## POLITICAL INSTITUTIONS

kept as low as possible, and the effective force of the British Army before the American War barely exceeded 17,000 men. The Mutiny Act also settled the amount of the grant made to the executive for the support of the standing army for one year. Therefore, by a legal fiction, the professional army was not, strictly speaking, a standing army, but was engaged and paid for one year only. The troops were, in Blackstone's words, "*ipso facto* disbanded at the expiration of every year, unless continued by Parliament."<sup>1</sup>

Moreover, there did not exist, as in the case of the Navy, the constitutional force of the country, a permanent statute, passed once for all by the two Houses, defining military offences and determining a corresponding scale of penalties, together with the composition of the military tribunals and the procedure to be followed. The Mutiny Act conferred on the executive every year, and for one year only, the right to punish by courts martial, and in accordance with their procedure and code, cases of desertion and insubordination; and an ineradicable prejudice forbade the quartering of the troops in barracks. That the separation between the life of the soldiers and the life of the civil population might be minimized, British soldiers throughout the whole of the 18th century were billeted in private lodgings, as a general rule at the inns. This was one of those peculiar usages which distinguished England from the rest of Europe and satisfied the nation that it was really free. Blackstone, content as a rule to explain and justify existing institutions, was not satisfied even with all these precautions against militarism. He desired that a fixed portion of the Army, on the expiration of the period for which they had been engaged, should be compelled to return to civil life. He questioned whether courts martial, such as they were found in the British Army, were after all indispensable. When their authority was extended to the militia, he declared them a danger to the national liberty.<sup>2</sup>

<sup>1</sup> I *Comm.* 413.

<sup>2</sup> I *Comm.* 415.

*The Tory Reaction and the Army.*

Such were the military institutions of Great Britain when George III ascended the throne with the avowed intention of changing a system expressly devised to weaken the Royal Prerogative. Throughout the earlier years of his reign he sought in vain to extract from his Colonial Empire the resources necessary for the maintenance of a large standing army freed from the control of Parliament. The attempt not only failed; it cost England her American colonies. But to all appearance he had succeeded better since the outbreak of the war with France in 1792.

His first victory had been gained in 1795, when he secured the appointment of his son, the Duke of York, to the newly created post of Commander-in-Chief. Henceforward, side by side with the Ordnance and War Offices controlled by Members of Parliament, stood the military offices of the Horse Guards, where a Prince of the Blood ruled. The Adjutant-General and the Quartermaster-General became, so to speak, his head clerks, and took advantage of the obscurities in the statutory definition of the functions of the Commander-in-Chief to extend their powers continually at the expense of the other departments. The Duke of York, who had received his military training at Berlin, attempted to introduce Prussian principles and methods into the British Army. His active policy made him popular with the Court party and with professional soldiers; but it aroused great suspicion among the members of the old Opposition, who waged a war without truce against him. When Fox became a Cabinet Minister in 1806, he secured the institution of a military council<sup>1</sup> to assist and control the Duke of York, in the administration of the Army. From the debates in Parliament, while this Cabinet was in office,

<sup>1</sup> He had made this demand first in 1803. See H. of C., December 9, 1803. "He thought it necessary that there should be a responsible military council, to govern the whole affairs of the War Department; although he felt a great personal respect for the Commander-in-Chief, he should not so far flatter him as to say that he was alone capable of governing that department. It was evident besides, that his high birth put him above responsibility" (*Annual Register*, 1804, p. 21).

## POLITICAL INSTITUTIONS

we can see plainly what ill-feeling had been produced at Court by the demand of the Whigs.<sup>1</sup> Three years later, when the Tories were in power, the Whigs renewed their attack.

They chose a time when all the expeditions on the Continent were unsuccessful—the moment also when the grave scandal was made public which the Opposition exploited to compel the resignation of the Duke of York. The head of the War Office at that time, the young Lord Palmerston, attempted to utilize the Duke's resignation to prevent the complete subordination of the departments under his own control to those under the authority of the Commander-in-Chief. He sought to effect an amicable arrangement by which their respective functions should be so apportioned that everything concerning the appointment of officers and military discipline would emanate from the Commander-in-Chief, while on the other hand the entire control of the finances of the Army would be restored to the War Office.<sup>2</sup> But he failed to obtain a definite settlement of the matter, and two years had not passed before the Duke of York was back in office. The Duke thus shared the glory of the victories won by the Army during the concluding years of the war. His chief aim now—to be fulfilled in 1820—was the election to Parliament of his military secretary. By this means—so, at least, he hoped—the Secretary for War would no longer be the sole representative of the Government for military purposes in the House of Commons. Side by side with him, even it might be in opposition to him, would sit the mouthpiece of the Commander-in-Chief.<sup>3</sup>

To the stronger control of the executive over the organization of the Army, corresponded the rapid abandonment of the old anti-militarist tradition. "No barracks" had been the popular cry in the 18th century—the soldier when off

<sup>1</sup> H. of C., April 3, 1806, Lord Castlereagh's speech (Military Establishments of the Country); April 17, 1806, General Tarleton's speech (Military Opinions relative to the Army); April 30, 1806, Canning's speech (Repeal of Additional Force Bill).—(*Parl. Deb.*, vol. vi. pp. 691, 783, 977.)

<sup>2</sup> Bulwer, *Life of Lord Palmerston*, vol. i. pp. 124 sqq. Cf. Lord Palmerston's Memorandum on the Office of Secretary at War, August 16, 1811 (Clode, *Military Forces*, vol. ii. pp. 689 sqq.)

<sup>3</sup> Clode, *Military Forces*, vol. ii. pp. 343-4.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

duty must remain a citizen and live among his fellow-citizens. In 1792 Pitt created by warrant the military post of Barrack-master-General; he employed the extraordinary revenue derived from the special war taxes in erecting barracks without having first obtained the sanction of Parliament. The indirect method which he deemed it necessary to adopt proves what violent opposition he must have expected to encounter had he asked the preliminary consent of the Commons.

But although the Opposition protested to good effect against the waste of public money, and succeeded after a series of official inquiries in checking the waste and in obtaining a reform of the organization established in 1792, the fact remains that, so far as the barrack system was concerned, Pitt won the day. At the opening of the war the British Government possessed in its forty-three forts and garrison towns quarters sufficient for no more than 20,847 men—artillery-men and infantry.<sup>1</sup> In 1815, 155 barracks, all recently constructed, afforded quarters for 16,854 cavalry and 138,410 infantry.<sup>2</sup> The old system of billeting the troops among the inhabitants had been definitely abandoned. "No standing army" was still the cry, or at least, if a standing army be indispensable, it must not be a large one. But in the course of the long struggle in which all Europe was involved, both parties had come to agree that it was impossible to do without a large army, and in pursuit of that end had radically changed the relations established by the tradition of a century between the militia and the standing army.

We have already seen that, since the early years of the reign, the militia had been no longer, strictly speaking, a citizen army; it had tended more and more to consist of professional soldiers attracted by the bounty given to substitutes. What reason, then, could there be to confine these men to home defence, while others taken from the same class of society, and recruited by identical methods, were sent abroad to fight on the Continent or further still, in America or Asia? It was impossible to justify an organization which drained

<sup>1</sup> Clode, *Military Forces*, vol. i. p. 223.

<sup>2</sup> Adolphus, *British Empire*, vol. ii. pp. 393 sqq., gives details as to the barracks and the number of men quartered in each. See, for a slightly earlier period, figures somewhat higher in the *Second Report of the Commissioners of Military Inquiry*, Appendix No. 4 (A), 1806.

## POLITICAL INSTITUTIONS

the sources from which the regular army was recruited, a system which gave to a labourer out of work or a tramp the choice between enlistment for life with the regulars for a bounty of less than £8 sterling, and enlistment for five years only in the county militia for a bounty which might exceed £20. Already during the first war Pitt had attempted to break down the barrier which divided the two forces, and by a series of temporary statutes, passed in 1795,<sup>1</sup> 1798<sup>2</sup> and 1799,<sup>3</sup> had authorized the enlistment of a certain number of militiamen in the regular army. In 1803, after the conclusion of the Peace of Amiens, every one knew that a renewal of hostilities was inevitable. Addington seized the opportunity to superimpose upon the militia an "additional force,"<sup>4</sup> which was simply a new militia, in its composition practically identical with the old, but with the difference that the soldiers of this reserve were authorized, indeed encouraged, to join the regulars.<sup>5</sup>

The results proved unsatisfactory and the system was abandoned. Nevertheless, in 1804 Pitt reorganized Addington's "additional force."<sup>6</sup> Raised for a period of five years, the "additional force" was to be employed solely for home defence, but was also to constitute the normal source from which the regular army would draw recruits, and was to be closely united with the regulars. With every regular battalion there would correspond a battalion of the "additional force," the dépôt battalion; and the old militia was so managed that, while its independence was respected, its importance was diminished. Henceforward it was not to exceed 51,000 men; all in excess of this figure were to be induced to take service at once with the regulars.<sup>7</sup> The

<sup>1</sup> 33 Geo. III, cap. 83 (Artillery and Marines), Clode, *Military Forces*, vol. i, pp. 2 and 3.

<sup>2</sup> 38 Geo. III, cap. 17.

<sup>3</sup> 39 Geo. III, cap. 106. Clode, *Military Forces*, vol. i, pp. 284-5.

<sup>4</sup> 43 Geo. III, cap. 82, § 33; 83, § 31; 85, § 28.

<sup>5</sup> See Fortescue, *County Lieutenancies and the Army*, p. 71: ". . . Very soon rumours were current that the officers were putting the largest clothes upon the smallest men, giving them misfitting shoes, and applying other such methods of petty tyranny in order to force them to take service at once with the Regulars."

<sup>6</sup> 44 Geo. III, cap. 56, 66, 74.

<sup>7</sup> 45 Geo. III, cap. 31. Fortescue, *County Lieutenancies and the Army*, p. 145.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

standing army came to be regarded less and less as an anomaly, an "excrescence,"<sup>1</sup> of the British Constitution. It was now the "regular" army, and the other forces were in comparison of subordinate and secondary importance. It was no longer maintained that a professional army was in itself unconstitutional. It was merely argued that the militia and the standing army were two counter-balancing forces, as in the Political Constitution were the Parliament and the Crown.<sup>2</sup>

Even the representatives of the old Whig Party gave way. In 1802 we find Fox still declaring it his opinion that in time of peace a small standing army was a better defence of the country than a larger body of troops.<sup>3</sup> Only a few months later, however, he retracted the opinion he had previously held and asked for a regular army "as numerous and as strong as possible."<sup>4</sup> In 1806, when he was one of the heads of the Coalition Cabinet, he allowed Windham, the Secretary for War, to strengthen the Army,<sup>5</sup> to attract recruits by a

<sup>1</sup> Blackstone, *I Comm.* 412: "When the nation was engaged in war, more veteran troops and more regular discipline were esteemed to be necessary, than could be expected from a mere militia . . . which are to be looked upon only as temporary excrescences bred out of the distemper of the State, and not as any part of the permanent and perpetual laws of the kingdom."

<sup>2</sup> See Canning's speech, H. of C., April 30, 1806: ". . . The right hon. gentleman is endeavouring to lay the foundation of a large regular army, while he is sapping all the other establishments which ought constitutionally to accompany it. The right hon. gentleman may perhaps tell me that the checks and balances to which I allude are mere creatures of the imagination; for that is utterly improbable that our militia or volunteers should in any instance be drawn out against the line. God forbid they should! But look, sir, at the analogy of our civil Constitution; what is it but a system of mutual checks and balances, which have a sure though silent operation on each other? Such is likewise the operation of our checks upon our standing army" (*Parl. Deb.*, vol. vi. p. 988). Cf. H. of C., June 18, 1804, Addington's speech: "We, sir, possess a constitutional army. . . . I think, sir, that army should always be commensurate with what is called the regular military force of the empire. . . . This House . . . should never forego this truly constitutional principle" (*Parl. Deb.*, vol. ii. p. 727).

<sup>3</sup> H. of C., December 8, 1802 (*Parl. Hist.*, vol. xxxvi. pp. 1083 sqq.).

<sup>4</sup> H. of C., July 18, 1803.

<sup>5</sup> 46 Geo. III, cap. 90. See Windham's speech, H. of C., April 3, 1806, and that of Fox himself, May 6, 1806 (*Parl. Deb.*, vol. vi. pp. 652 sqq.; vol. vii. pp. 22 sqq.).

## POLITICAL INSTITUTIONS

system of short-term enlistments,<sup>1</sup> and to procure the adoption by Parliament of a Bill providing that 4,000 Irish militiamen should pass annually into the line regiments.<sup>2</sup> Lord Castle-reagh, Windham's Tory successor at the War Office, instituted a "local militia" in which no substitutes were allowed, and no bounty given, a force exclusively territorial. In this militia military training could be given every year to as many as 300,000 men.<sup>3</sup> But he returned, at the same time, to Pitt's system, and by a series of temporary Acts allowed the Army to draw the necessary recruits from the old militia. An Act of 1807 authorized two-fifths of each militia regiment to enlist in the line. This Measure rendered 30,000 men available for the regular army.<sup>4</sup> An Act of 1809 conceded 28,500 men,<sup>5</sup> a further Act of 1811 10,000 men every year.<sup>6</sup> And again in 1813 the Crown was authorized to take a further 30,000 men from the militia, the sole condition imposed being that no militia regiment should be allowed to fall below a quarter of its strength. The militiamen sent to the Peninsula, in accordance with the provisions of this Act, were to retain during their foreign service the appellation of militiamen, and were to form distinct battalions or regiments under the command of their own officers.<sup>7</sup> By this Measure, in defiance of traditional principles, the militia was formally employed on foreign service. But we do not need this Act to measure the extent to which the militia had degenerated. It was now nothing more than a school where professional soldiers were trained for service in the line, "a recruiting, or . . . a crimping fund for the supply of the regular army."<sup>8</sup>

In the first year of the war the Government had believed

<sup>1</sup> 46 Geo. III, cap. 66. Schedule. Clode, *Military Forces*, vol. ii. pp. 28-9.

<sup>2</sup> 46 Geo. III, cap. 124.

<sup>3</sup> 48 Geo. III, cap. III, 150.

<sup>4</sup> 47 Geo. III, Sess. 2, cap. 55, 57.

<sup>5</sup> 59 Geo. III, cap. iv. Fortescue, *County Lieutenancies and the Army*, p. 223.

<sup>6</sup> 51 Geo. III, cap. 20, 30. *Ibid.*, p. 254

<sup>7</sup> 54 Geo. III, cap. 1, 17, 20. To enable His Majesty to accept the services of a proportion of the militia out of the United Kingdom, for the vigorous prosecution of the war.

<sup>8</sup> H. of C., May 9, 1809, Lord Fitzwilliam's speech (*Parl. Deb.*, vol. xiv. p. 436.).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

that 46,000 men in Europe with 10,000 men in the East Indies would be a sufficient army. In 1801, immediately before the Peace of Amiens, the Ministry asked Parliament for the necessary credits to maintain a regular army of 193,000 men. Even during the truce that followed, the number of effective troops never fell below 78,000. The figure of 200,000 men had been exceeded since 1807, that of 250,000 men since 1812.<sup>1</sup> After the first entry of the Allies into Paris and the first restoration of the peace in Europe, the Government was still able to obtain the sanction of the Commons in November, 1814, for an army of 204,000 men.<sup>2</sup> Even after Waterloo the Ministry was prepared to ask the Commons for an army of 150,000 men. If we subtract 20,000 men serving in the East Indies and 30,000 men employed in the occupation of French territory, we are left with a garrison of 100,000 in the United Kingdom.<sup>3</sup> The Tories had succeeded in enabling the Government to establish a larger army than England had ever before possessed. But was the value of the British Army in proportion to its size? Moreover, did this enormous increase of numbers necessarily endanger the balance of the Constitution? Before we are in a position to answer this double question, we must describe the organization of the regular army. We shall find it an aristocratic organization, and therefore in perfect harmony with the organization of all the other executive departments.

### *Privates and Officers.*

The British Army was recruited by voluntary enlistment. The kingdom was divided into recruiting districts. At the head of each district was a paymaster, who directed the labours of recruiting sergeants and civil agents, or crimps.<sup>4</sup> Other

<sup>1</sup> For these figures, consult further the Parliamentary Debates on the annual introduction of the Army Estimates (Fortescue, *County Lieutenancies and the Army, passim*). The statistics are hard to interpret; sometimes the officers, the foreign soldiers in the pay of the British Government, and the artillery are included —at others excluded.

<sup>2</sup> 204,386 men, 55 Geo. III, cap. 20.

<sup>3</sup> See especially H. of C., 2 February 26, 27 and 28, 1816 (*Parl. Deb.*, vol. xxxii, pp. 841, 843, 909, 955).

<sup>4</sup> Adolphus, *British Empire*, vol. ii. pp. 286-7.

## POLITICAL INSTITUTIONS

methods, indeed, were sometimes employed to obtain the necessary men. During the 18th century several statutes had authorized the conscription of able-bodied vagabonds.<sup>1</sup> Up to 1815 the governors of prisons were granted the right to shorten the imprisonment of a certain number of criminals, on condition of their enlistment. Three regiments of the army in Portugal had been recruited by this method.<sup>2</sup> But the former method had not been employed at all since 1780, and the latter was only employed under exceptional circumstances. Wellington could therefore assert with perfect sincerity twenty years later<sup>3</sup> that *never* had any other method of recruiting been in use save that of voluntary enlistment. This was, as we saw, by no means the case with the Navy. What, then, was the reason of this difference between the two services? Like the sailors, the soldiers were enlisted for an indeterminate period. They had no more, or rather they had even less, chance than the sailors of promotion to the rank of officer. At rare intervals a recruiting sergeant might save enough money to purchase an ensign's commission.<sup>4</sup> In time of war it might happen that a non-commissioned officer was rewarded for a deed of bravery by promotion; ten years of warfare had produced many such cases.<sup>5</sup> But ensigns who had risen from the ranks could never rise to a higher grade; "the ensigncy was their marshal's baton."<sup>6</sup> Their manners were bad, and their heads could not stand the hard drinking. They were made to feel that they were out of place, and very soon threw up their commission. We must

<sup>1</sup> Clode, *Military Forces*, vol. ii. pp. 18-19.

<sup>2</sup> *Ibid.*, vol. ii. pp. 13 sqq.

<sup>3</sup> *Report from . . . Commissioners . . . into Military Punishments, Minutes of Evidence*, p. 321.

<sup>4</sup> Fortescue, *County Lieutenancies and the Army*, p. 105.

<sup>5</sup> The *Quarterly Review* (vol. xiii. p. 420) deplored this mixture of classes, which it ascribed to two causes—"the principles introduced by the French Revolution, and the long war which it entailed upon Europe."

<sup>6</sup> Foy, *Guerre de la Peninsule*, vol. i. p. 237. Cf. *Report from . . . Commissioners . . . into Military Punishments (Minutes of Evidence*, p. 329). The Duke of Wellington's evidence: "I believe that in the Peninsula, I gave every commission I had to give away either to gentlemen volunteers or to non-commissioned officers." He adds, however, that very few of the latter had remained in the Army. "They are not persons that can be borne in the society of the officers of the Army."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

not forget that the Government, yielding to the pressure of democratic opinion, had shown their eagerness to ameliorate the conditions of military service. The bounties on enlistment had been enormously raised. From the 16th century to the Peace of Utrecht they had been kept, roughly speaking, at the figure of £2. They had risen to three guineas during the American War. By 1803 they had reached the amount of £7 12s. 6d., by 1814 that of sixteen guineas.<sup>1</sup> The rate of pay had increased proportionately, and was now double the pay of a French or Prussian soldier.<sup>2</sup> Since 1799 it had been the custom to collect for the information of their families the names of soldiers who had been killed or wounded. In 1806 Windham not only raised the retiring pensions, but decided at the same time, despite Tory protests, that these pensions should no longer be regarded as favours granted at the pleasure of the Government, but that twenty years' service should entitle a soldier to retire on a pension. In 1811 and 1812, in consequence of an active campaign in the Press, regulations were made to render the punishment of flogging less frequent and less severe.<sup>3</sup> But the true reason why the War Office found less difficulty than the Admiralty in obtaining the necessary recruits was, after all, economic. Seamen could earn in the Merchant Service the wages of skilled labourers—wages moreover which, on account of the risks of navigation, rose whenever war was declared, that

<sup>1</sup> Clode, *Military Forces*, vol. ii. pp. 4-5, 19, and Fortescue, *County Lieutenancies and the Army*, pp. 74, 130.

<sup>2</sup> Clode, *Military Forces*, vol. i. p. 106. It had been fixed at 1s. a day in 1797. Since then it had been increased by reducing the deductions made to cover various expenses. After all such deductions had been made the common soldier actually received 2½d. a day (Foy, *Guerre de la Peninsule*, vol. i. p. 230).

<sup>3</sup> Article 22 of the Mutiny Act of 1811 (51 Geo. III, cap. 8) empowered courts martial to punish with imprisonment, not only, as hitherto, with the lash. . . . See the protests of the *Courier*, a semi-official organ, February 25, 1811. In 1812 a confidential circular from the Commander-in-Chief forbade courts martial to inflict "on any pretext whatsoever" more than 300 lashes. The circular adds: "Sufficient attention has not been paid to the *prevention of crime*. The timely interference of the officer, his personal intercourse, and above all his personal example, are the only efficacious means of preventing military offences" (*Report from H.M.'s Commissioners for Inquiring into . . . Military Punishments . . . , 1836, Minutes of Evidence*, p. 303).

## POLITICAL INSTITUTIONS

is to say at the very moment when the Navy was most in need of sailors. In the Army, on the other hand, the pay was practically equal to the wages earned by an unskilled labourer in the country or in the great industrial centres.<sup>1</sup> But the development of English manufactures during the last thirty years had made the condition of the workmen extremely uncertain. Sometimes they were attracted in crowds to the towns, where the factories were constantly growing in size and number. At others a crisis of over-production threw them on to the streets without work or food. For these unemployed the Army was a welcome refuge, and the parish authorities were only too glad to be relieved by the State from the burden of their maintenance. At the beginning of the 18th century the English had ascribed the superiority of Marlborough's troops to the fact that they were recruited from the small landowners, the country yeomen. During the Seven Years' War they had taken credit for the utilization in their Highland regiments of the savage virtues of Northern Scotland, so lately reduced to order. The regiments that were now winning the Peninsula victories were composed of discarded factory hands.

All officers' commissions, from the ensign's to the lieutenant-colonel's, were on sale.<sup>2</sup> Crown and Parliament had attempted after 1688 to abolish the abuse; but the attempt had not proved successful and the Government had contented itself with minimizing the evil, by subjecting it to a series of official regulations. An officer was no longer allowed to sell his commission to the first purchaser. He continued to receive the purchase money, but the State selected the purchaser. Nor was an officer permitted any longer to fix his own price—an official scale of prices was established. Nor could he any longer sell his commission at any time he chose, but only after twenty years' service or on account of ill-health con-

<sup>1</sup> Clode, *Military Forces*, vol. i. p. 489. Table showing the pay and allowance of the soldier and agricultural and town labourer.

<sup>2</sup> The practice is so general as to be almost universal. It extends to at least three-fourths of all the officers appointed to fill commissions. (*Report from Select Committee on Army and Navy Appointments*, 1833, Appendix, p. 273. The Duke of Wellington's memorial.) The Crown reserved the right to dispose of the commission of every officer who had been promoted without having purchased his rank, or had fallen in the field.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

tracted in the Army. Neither was an officer any longer permitted to purchase his commission whenever he chose. No one could become captain until he had served three years, major until he had served seven years, lieutenant-colonel until he had served nine years.<sup>1</sup> Again, the purchase money no longer passed directly from the purchaser to the vendor. The State interposed between them, and in some cases did not pay over the whole price to the retiring officer, but kept back a portion to form a "reserve fund" from which to improve half-pay, and to relieve the widows and orphans of officers and privates. Nevertheless, for all these reforms the purchase system still survived and would survive for many a year to come.

The Treasury looked with favour on a custom which enabled a system of retiring pensions to be organized without apparently costing the nation a single penny.<sup>2</sup> Advocates of the constitutional oligarchy defended the abuse both as making it difficult for soldiers of fortune to become officers and as weakening the control of the central government over the Army. Officers who had purchased their rank naturally came to regard their commissions as title-deeds to a property. Although the validity of this contention was of very dubious legality,<sup>3</sup> and had never been admitted by the courts, it was nevertheless inevitable that the purchase system should to some extent protect the subordinate officers against their superiors, and against the Government departments. One thing, at any rate, is certain; the officers of the British Army were financially independent of the Government. An ensign in the infantry drew £80 a year, but he had paid £400 for the right to draw it. If, therefore, we deduct the interest on the capital expenditure, we find that in reality he only received £60 a year. A lieutenant-colonel drew £405 a year, but had paid £3,500 for his commission. When, therefore, all deductions had been made, he actually received

<sup>1</sup> Foy, *Guerre de la Peninsule*, vol. i. p. 248.

<sup>2</sup> Communication from the Duke of Wellington to Lord Hill. *Report from Select Committee on Army and Navy Appointments*, 1833, Appendix, p. 274.

<sup>3</sup> *Rules and Regulations respecting Appointments, Promotion and Retirement in the Army*. Report of Commissioners . . . into Naval and Military Promotion and Retirement, 1804, Appendix, pp. 285-6.

## POLITICAL INSTITUTIONS

only £230 a year.<sup>1</sup> In legal terminology his pay was *honorarium non merces*.<sup>2</sup> In the higher ranks, which were not for sale, the pay was indeed higher,<sup>3</sup> but here there were restraints of another sort on the action of the authorities. From the rank of colonel to that of field-marshal promotion went by seniority. Favouritism or influence of any kind was thus impossible. The Government could not even promote an officer, as a reward for some brilliant exploit, without at the same time promoting all the officers of the same rank who had received their commissions before him. The Opposition speakers were wrong to regard the excessive increase of the general staff as due to royal favour. The increase was the inevitable result of applying a rule which deprived the commander-in-chief of all freedom of choice in the nomination of the higher officers.

Theoretically, the purchase system was no doubt rather plutocratic than aristocratic. Wealth was an indispensable qualification for an officer, birth was not. There was nothing to prevent a wealthy city merchant buying a commission for his son, and thereby purchasing his admission into the aristocracy of the kingdom. When Mrs. Clarke, the Duke of York's mistress, organized her traffic in promotions, there is nothing to show that she ever troubled to inquire into the birth or standing of her clients. Certain great families had entertained for a long time past strong prejudices against a military career.<sup>4</sup> The British aristocracy, as it was seen in

<sup>1</sup> Foy, *Guerre de la Peninsule*, vol. i. pp. 245-6.

<sup>2</sup> Clode, *Military Forces*, vol. i. p. 106; vol. ii. pp. 115-16.

<sup>3</sup> Till 1814 an officer above the rank of colonel, whatever that might be, was honorary colonel of a regiment and only received a colonel's pay. In 1833 Wellington estimated the total remuneration of a colonel in the cavalry at £1,400 a year (that is his pay with the profit which he made on the supply of uniforms to the regiment), and that of a colonel in the infantry at £1,100 a year. It was only in 1814 that a regulation was made by which generals as such were to be paid at the rate of £1 18s. a day, lieutenant-generals at the rate of £1 5s. (*Report . . . on Army and Navy Appointments*, 1833, pp. 273, 276).

<sup>4</sup> Wellington, *Memorandum on the . . . Discipline of the Army*, April 22, 1829: "The British Army . . . disliked by the inhabitants, particularly by the higher orders, some of whom never allow one of their family to serve in it" (*Dispatches*, vol. viii. p. 344). We may compare with his language a passage from *Lady Holland's Journal* (October 19, 1799, vol. ii. pp. 32-3): "Lord G. is raising

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the Army, appeared to a foreign observer like General Foy of a mixed character and hard to define—"a blend of noble birth, financial and mercantile interests, talent, the nominees of Government, wealth derived from manufactures or land."<sup>1</sup> Nevertheless, the officers were, as a body, aristocratic, certainly more aristocratic than the officers of the Navy.<sup>2</sup> For the *nouveaux riches* the Army was, after all, far from a good way to enter society, and the poor were practically excluded from it. Fifteen generals were raised to the peerage under George III; of these only three came of obscure birth. Twelve of these fifteen officers had been raised to the peerage since 1792 and all the twelve except one, Lord Harris, the son of a curate, belonged to noble or very good families.<sup>3</sup> There can be no doubt that it was because the officers were taken from the landed aristocracy, and because that aristocracy was the dominant power in Parliament, that soldiers were so numerous in the Commons. In 1812 thirty-four were elected. The English officer was essentially an aristocrat, for whom camp life was but the continuation of the life on his country estate, to which he had been accustomed from infancy. War was a sport like any other, only rougher and more dangerous. When a young man scarcely sixteen years old bought an ensign's commission and joined a regiment, he found a non-commissioned officer, without prospect of promotion to a higher rank, ready to advise him and to cover his inexperience. And in this old sergeant who inspired or

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a regiment, and is appointed Lieutenant-Colonel. I am sorry he throws away very excellent abilities upon a profession where so little is required—at least, as it is practised in this country; and I believe as a good patriot one ought to hope it may for ever remain as insignificant as it has done hitherto." But these prejudices were weakening (*ibid.*, August 21, 1793, vol. ii. p. 16): "The young men of fashion and birth are bit with a military mania; they all aim at attaining a martial air, and a reputation for strictness in their militia discipline."

<sup>1</sup> Foy, *Guerre de la Peninsule*, vol. i. p. 239.

<sup>2</sup> Perhaps this is the reason why there were more soldiers than sailors in the House of Commons. Among the members were two generals, fifteen lieutenant-generals, eight major-generals, three lieutenant-colonels, two majors, a captain, and three colonels of militia.

We may add five military peerages of Ireland—all aristocratic.

## POLITICAL INSTITUTIONS

interpreted his orders, the young officer would recognize the old servant who in days gone by on the family estate taught him to ride or to shoot.

We are by no means disposed to make light of the advantages in an army, as elsewhere, of aristocratic institutions. If they are freely accepted, and deliberately willed by all the members of a society, even by those who do not themselves belong to the governing oligarchy, they are calculated to spread among all ranks a collective pride, which is a source of energy and power. "When each class," wrote Alison, the Tory historian, "is respectable and protected in itself, it feels its own importance, and often disdains to seek admission into that next in succession; the universal passion for individual exaltation is the offspring of a state of society where the rights and immunities of the humbler ranks have been habitually, by all persons in power, trampled under foot."<sup>1</sup> The English officer was proud to be a member of an aristocracy which, if not the most exclusive, was most certainly the most solid in the world. The soldier was proud to occupy his position in the hierarchy of the British Army. Whether a common soldier or a non-commissioned officer, the mere fact of serving, without hope of promotion, in the British Army made him in very deed an aristocrat among the soldiers of the other European armies. It would be true to say that the British Army was an army of snobs, and that the universal snobbery produced here a maximum of good results. But we must not, on the other hand, ignore the numerous defects and disorders, forgotten in the intoxication of the final victory.

### *Lack of Discipline in the Army.*

The discipline of the British Army was very imperfect. "The Bishop of Killala," wrote Lady Holland in 1800, "yields the palm of superiority to the English for their dexterity in pillaging and in plunder; indeed, compared with every European army, save the Papal one, it is the only excellence in candour we can admit them to lay claim to."<sup>2</sup>

<sup>1</sup> Alison, *History of Europe*, vol. xii. p. 22.

<sup>2</sup> *Journal of Lady Holland*, March 22, 1800, vol. ii. pp. 61-2.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Since Lady Holland penned these words the English had learnt to conquer, but their indiscipline was Wellington's constant complaint.<sup>1</sup> All the reforms introduced by him to render the sentences of the courts martial in time of war prompter and more certain, failed to effect their object. After the defeat at Burgos the soldiers left the ranks during the retreat on Ciudad Rodrigo, just as they had left the ranks three years earlier after the victory of Talavera during the retreat on Badajoz; and never did Wellington issue a more severe order of the day than that which he then addressed to the officers and non-commissioned officers of his army. The soldiers left the ranks after Vittoria, on the very eve of invading French territory, just as they had left the ranks four years earlier, when they had compelled Soult and his army to evacuate the province of Oporto. In the hour of battle the British Army had no rival, but it was impossible to keep it in good order during the long marches which preceded

<sup>1</sup> Letter to A. J. Villiers, May 31, 1809 (*Dispatches*, vol. iii. p. 262): ". . . I have, I say, been of opinion that the British Army could bear neither success nor failure, and I have had manifest proofs of the truth of this opinion in the first of its branches in the recent conduct of the soldiers of this army. They have plundered the country most terribly." To the same, September 18, 1809 (*Dispatches*, vol. iii. p. 488): "I really believe that more plunder and outrage have been committed by this army than by any other that ever was in the field." To Lord Liverpool, January 24, 1810 (*Dispatches*, vol. v. p. 704): "The outrages committed by the British soldiers belonging to this army have become . . . enormous." To Lord Bathurst, July 2, 1813 (*Dispatches*, vol. vi. p. 575): "It is quite impossible for me or any other man to command a British army under the existing system. We have in the service the scum of the earth as common soldiers; and of late we have been doing everything in our power, both by law and by publications, to relax the discipline by which alone such men can be kept in order, . . . etc., etc." See, however, in the *Report from . . . Commissioners . . . into Military Punishments*, 1836 (*Minutes of Evidence*, pp. 316-27), Wellington's extremely favourable evidence as to the discipline of the Peninsula army. We must not, indeed, forget that this evidence was not given till above twenty years after the events. But on the other hand, even Wellington's contemporary evidence should not be accepted without reserve. (1) He was a man who belonged to good society, not a soldier of fortune, and therefore would be more shocked by the disorders of camp life than one of Napoleon's generals would have been. (2) His complaints of the lack of discipline among his troops cease immediately the army has entered France; the condition of Spain incited to indiscipline and pillage.

## POLITICAL INSTITUTIONS

and followed the battles. The English generals were never, indeed, faced with an organized mutiny of their troops, like the naval mutiny at the Nore. The English private was no deliberate rebel who mutinied on principle;<sup>1</sup> but disorder, drunkenness and plunder were chronic diseases of the expeditionary force in Spain and Portugal. The aristocratic organization was one of the causes, if not the essential cause, of this permanent state of indiscipline.

The English officer was a man of fashion, who regarded war as a sport, not a science. The Academy at Woolwich was confined to the engineers, and it was only in 1799 and 1802 that the Duke of York founded at High Wycombe and Great Marlow military schools, modelled on those of France, Austria and Prussia.<sup>2</sup> It was calculated in 1815 that of 276 pupils of the higher grade, 114 had served or were serving as staff officers, and 651 pupils of the lower grade had already entered the Army.<sup>3</sup> This was little enough. It is also obvious that the new institution had not had time to bear fruit during the Peninsular War. Moreover, the candidate for a commission was under no obligation to pass through the Government school. When he joined his regiment, the average English officer possessed no more knowledge than that which he had managed to pick up at a preparatory school between the ages of ten and fifteen. The British staff officers in 1815 were still regarded by the whole of Europe as the most incompetent in the world. "Nobody in the British Army," wrote Wellington, "ever reads a regulation or an order as

<sup>1</sup> Napier, *History of the Peninsular War*, vol. iii. p. 271. We must except the Indian Army, in which mutinies had been frequent during the previous half-century, but in making this exception we must take into account two facts: (1) The Indian Army served under very exceptional conditions; (2) the mutinies were not mutinies of soldiers against their officers, but mutinies of the Company's officers, with the support of their troops, against the commander-in-chief and the government of the Company. See, for these mutinies, an able article in the *Quarterly Review*, February, 1811, Art. 8, *India: Disturbances at Madras* (vol. v. pp. 140 sqq.); also John Malcolm, *Observations on the Disturbances in the Madras Army in 1809, 1812*.

<sup>2</sup> Adolphus, *British Empire*, vol. ii. pp. 364-6; Fortescue, *History of the British Army*, vol. iv. pt. 2, pp. 926-7.

<sup>3</sup> H. of C., June 2, 1815, John Hope's speech (*Parl. Deb.*, vol. xxxi. p. 591).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

if it were to be a guide for his conduct, or in any other manner than as an amusing novel; and the consequence is, that when complicated arrangements are to be carried into execution . . . every *gentleman* proceeds according to his fancy; and then, when it is found that the arrangement fails (as it must fail if the order is not strictly obeyed), they come upon me to set matters to rights and thus my labour is increased tenfold.”<sup>1</sup> The officers thrown all together in a foreign land formed a large aristocratic club, divided into sets, and without any clearly determined order of precedence. There was, indeed, the precedence of official rank. But this came into collision with the precedence of social rank; and the organization of the British Army was less hierarchic than that of any other army in the world. The Army was composed of isolated regiments, which were not co-ordinated in regular groups, in army corps, in divisions, in brigades; neither was the precedence of social rank decisive. Since Pitt had multiplied peerages, they had lost much of their value. The scion of an old country family was little disposed to treat with deference the son of a lord of yesterday’s creation. General Foy remarks with disgust that “duels between officers of unequal rank, although severely punished, are by no means uncommon.”<sup>2</sup> The mess was a veritable council of war, held daily, where every officer criticized freely the acts of the general. It contained both Whigs and Tories. The Whigs were pessimists, predicted final defeat, were ready to demonstrate the inutility of the victories already won, the impossibility of opposing a permanent resistance to the vast armies of Napoleon. When the Army was in retreat they were triumphant, and the malcontents of every kind would then swell the Opposition party among the staff officers. Letters, written by officers to friends in London, soon found their way into the newspapers. During the British retreat in Portugal before the advance of Massena’s army the disorder became intolerable. “The temper,” exclaimed Wellington, “of some of the officers of the British Army gives me more concern than the folly of the Portuguese Government. . . . Whether owing to the Opposition in

<sup>1</sup> Letter to Colonel Torrens, December 6, 1812 (*Dispatches*, vol. vi. p. 201).

<sup>2</sup> Foy, *Guerre de la Peninsule*, vol. i. p. 244.

## POLITICAL INSTITUTIONS

England, or whether the magnitude of the concern is too much for their minds and their nerves, or whether I am mistaken and they are right, I cannot tell; but there is a system of croaking in the Army which is highly injurious to the public service, and which I must devise some means of putting an end to, or it will put an end to us."<sup>1</sup> The evil continued

<sup>1</sup> Wellington, letter to Charles Stuart, September 11, 1810 (*Dispatches*, vol. iv. p. 274). Cf. Lord Liverpool to Wellington, September 10, 1810 (Yonge, *Life of Lord Liverpool*, vol. i. p. 335). See further, Wellington's letters to Lord Liverpool, January 2, 1810 (*Dispatches*, vol. iii. p. 671): "I wrote to you the other day about general officers. I only beg you not to send me any violent party men. We must keep the spirit of party out of the Army, or we shall be in a bad way indeed." To Lord Liverpool, May 15, 1811 (*Dispatches*, vol. v. pp. 21-2): "It is to be hoped that the general and other officers of the Army will at last acquire that experience which will teach them that success can be attained by attention to the most minute details; and by tracing every part of every operation from its origin to its conclusion, point by point, and ascertaining that the whole is understood by those who are to execute it." To Lord Liverpool, May 28, 1812 (*Dispatches*, vol. v. p. 682): "I cannot prevail upon the general officers to feel a little confidence in their situation. They take alarm at the least movement of the enemy, and then spread the alarm and interrupt everything." To Colonel Torrens, September 13, 1812 (*Dispatches*, vol. v. pp. 73-4): "I am sorry to say that the perpetual changes which we are making, owing to the infirmities or the wounds, or the disinclination of the general officers to serve in this country, are by no means favourable to the discipline and success of the Army; and don't augment the ease of my situation." To Colonel Torrens, July 18, 1813 (*Dispatches*, vol. vi. p. 604): "I am sorry that I can't recommend X for promotion. . . . I had had him in arrest since the battle for disobeying an order given to him by me verbally. . . . If discipline means . . . obedience to orders as well as military instruction, we have but little in the Army. Nobody ever thinks of obeying an order. All the regulations, etc., are so much waste paper." To Lieutenant-Colonel Barns, February 9, 1814 (*Dispatches*, vol. vii. p. 310): "It is extraordinary that resistance to authority should be so frequent as it is by the British officers and soldiers of the Army. . . . It has lately been so frequent, and the instances attended by such serious consequences, that it is necessary that I should endeavour to prevail upon general courts martial to mark their disapprobation of such conduct more forcibly, etc." We should notice how Gisborne, an extremely conservative moralist and a Tory, defines an officer's duty of obedience in his *Duties of Man*, vol. i. pp. 287-8: "Every individual officer who is called into active service is bound to investigate the justice of the war in which he engages, to the utmost extent of his abilities and information. . . . If he

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

notwithstanding, and was lamented by Wellington to the end. The contention of the apologists of the English system that this system was at the same time and for the same reasons an aristocratic and a free system was indeed correct —in this sense at least, that the ruling class, both in the Army and elsewhere, was in reality a vast deliberative assembly which “governed itself,” unfettered by the control of any clearly defined authority. Such a system was sheer anarchy, government of the Polish type. Why, then, did not England perish like the kingdom of Poland?

The indiscipline of the troops is to be explained by the same causes as the indiscipline of the officers. Wellington cast about him in vain for a means to establish discipline in his army. He ascribed the evil to the fact that England was not governed despotically like the Continental nations. A commander might, indeed, try the experiment of keeping the soldiers under arms the whole day long, confining them strictly to camp or barracks between the drills, and only permitting them to go into a town in bands under the supervision of a corporal; but the soldiers would find such a regular life an intolerable burden. It were better to allow them more liberty, with the knowledge that for grave offences or crimes they would incur very severe penalties.<sup>1</sup> Were conscription employed the discipline of the troops would be greatly improved. But the English would not accept this system of slavery, and it remained, therefore, to make the best possible out of an army recruited from the rabble.<sup>2</sup> Again, the English officer made it his first point of honour to be a gentleman. The rules of his class obliged him to keep his distance from the non-commissioned officers and privates. He had joined the Army to fight, not to perform the wearisome duties of an accountant or a jailor. There was therefore

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should be thoroughly convinced that his own country is the culpable aggressor in the quarrel, or deems the probability to be very greatly on that side, it is his indispensable duty to resign his employment. . . . Will it be said that it is his part to obey and leave the State to answer for the guilt? This is not the argument of a considerate man or of a Protestant.”

<sup>1</sup> Wellington, *Memorandum . . . on the Discipline of the Army, 1829 (Dispatches, vol. viii. p. 347).*

<sup>2</sup> *Dispatches, vol. viii. pp. 345, 350.*

## POLITICAL INSTITUTIONS

nobody in the British Army, either in the infantry or in the cavalry, whose particular duty it was to do the work which in Continental armies fell to the subalterns. The charge of everything that makes up the daily life of an army—of marching formations, of pitching the camp—was left to the non-commissioned officers. The latter formed with the privates a world apart, a world unknown to the officers, and recruited from the lowest strata of the population. For such the Army was a school of moral discipline only because their previous degradation had been so extreme. They were left to discipline themselves as best they could and would, that is to say, very ill indeed. Even when by chance the officers had the desire to enforce order in the lower ranks, they proved themselves the most ignorant and blundering of rulers.<sup>1</sup> To sum up, the aristocratic constitution of the Army was to blame for the indiscipline of the troops, not only because of itself it involved the dangers as well as the advantages of freedom, but above all because it prevented the officers getting to know their men. The British Army was that of a bygone age, in essentials still the same as in the days of Marlborough. But, in the interval, Frederick II and Napoleon had created a new type of military organization.

### *The Final Triumph. Wellington.*

Nevertheless, the British Army had been victorious. Eight years of uninterrupted success had obliterated the memory of the humiliating defeats which it had suffered in Flanders and Holland, defeats now fifteen to twenty years old, and had demonstrated, in the opinion of a Tory writer, "the inherent superiority of the British race." To be sure, we must not forget that when the English victories began, the Russians at Friedland and the Austrians at Essling had already shown that it was possible to offer successful resistance to the French. The English, moreover, conquered in a country where for the first time the French found to their discomfiture that the lower orders did not behold with joy, or even with equanimity, the overthrow of their Government. The changed circum-

<sup>1</sup> Wellington, *Memorandum . . . (Dispatches*, vol. viii. p. 346)  
Cf. Foy, *Guerre de la Peninsule*, vol. i. p. 241.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

stances acted differently on the spirit of the two armies. While the *moral* of the British Army rose, the *moral* of the French Army declined. Wellington is the typical figure of this period of the war. His name does not mark an epoch in the history of modern strategy or tactics. He must not be expected, like Napoleon, to reduce an entire campaign to a single battle, nor like Napoleon, to conquer a kingdom within a few weeks by a fixed date and according to a prearranged plan. Each time that in imitation of his rival he attempted to conclude a campaign by a march on the capital, as in 1809 and in 1812, his rash victories had been followed by perilous retreats. Had Napoleon been in command of his Spanish army in July 1809, instead of being at Wagram, Wellington's army would perhaps have been annihilated. In 1812, if the Grande Armée had not been on its way to Russia, it is highly doubtful whether Wellington's army would have been left secure and entire in Portugal. He was not even a great tactician. In the hour of battle he trusted entirely to the bravery of his troops, to their coolness, and to the solid resistance they offered to the enemy's charge, to wear out the ardour of the French. Had he wished to do more than this, he would have been obliged first to reorganize his army, which, though steady, was heavy and slow-moving, always encumbered with baggage and unable to undertake anything without having first secured its retreat and communications with the sea. He preferred to take it as he found it. The man of the moment, he relied on circumstances and adapted himself to the situation. This is the secret of his greatness.

When he first arrived in Portugal, he cherished no ambition to march from Lisbon to Madrid, from Madrid to Paris. One day Sir Brent Spencer, his principal lieutenant, asked the Duke what his plans were. "It would," he said, "be a great misfortune to the army if it were to lose you; but still you might be killed, and I think it necessary that I should ask you what are your plans, in order that I may be able to carry them out in case I should unfortunately succeed to the command of the army." "Plans," replied Wellington, "ah, plans. I haven't got any plans, except that I mean to beat the French. If I can't do it in one way, I will in another."<sup>1</sup>

<sup>1</sup> *Memoirs and Correspondence of Lord Combermere*, vol. i. p. 192.

## POLITICAL INSTITUTIONS

With the situation he hoped and despaired by turns, but he always remained true to his vocation. When Napoleon undertook the conquest of the entire civilized world, he was attempting a task which exceeded the power of man. Wellington looked for victory neither to the genius of his subordinates, nor to his own, but to the force of events. After Talavera and before Massena's invasion of Portugal, he all but despaired of success; but Massena's attempt failed. The French no longer acted with their accustomed decision. They lacked the personal command of Napoleon. They divided their forces, wasted time over sieges, in short made war in the old style. This was, of course, all to the advantage of an army of the old style, like the British. Witness the events of 1812, the year of the Russian campaign and of Wellington's victory at Salamanca; or again the events of 1813, the year that witnessed the German campaign, and the rout of King Joseph at Vittoria. Wellington then crossed the Bidassoa and entered France. It was the triumph of common sense over genius.

Wellington had yet to confront Napoleon face to face. At Waterloo, Napoleon gave him the opportunity, and Wellington's military career closed with a brilliant victory. He did not, however, take any particular pride in his triumph. Before the battle he complained incessantly of the soldiers who had been placed under his command, and were not his old soldiers of the Peninsular War. "To tell you the truth," he wrote to a Minister, "I am not very well pleased . . . with the manner in which the Horse Guards have conducted themselves towards me. It will be admitted that the army is not a very good one. . . . I am overloaded with people I have never seen before, and it appears to be purposely intended to keep those out of my way whom I wished to have."<sup>1</sup> In a letter written a few days later he employs stronger language: "I have got," he wrote, "an infamous army, very weak and ill-equipped, and a very inexperienced staff."<sup>2</sup> Even when the victory had been won, he was annoyed

<sup>1</sup> Letter to Earl Bathurst, May 4, 1815 (*Supplementary Dispatches*, vol. x. p. 219).

<sup>2</sup> Letter to General Lord Stewart, May 8, 1815 (*Dispatches*, vol. viii. p. 66). He continues: "In my opinion they are doing nothing in England. They have not raised a man; they have

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

to see it unduly magnified. In the efforts that he made to discourage men of letters from writing its history, there is evident, besides considerable irritation at the inaccuracy of accounts composed by civilians, the fear that the historians, if by chance they should arrive at a knowledge of the real facts, would publish many instances of indiscipline and weakness best forgotten.<sup>1</sup> "I am," he wrote, "really disgusted with, and ashamed of, all that I have seen of the Battle of Waterloo. The number of writings upon it would lead the world to suppose that the British Army had never fought a battle before."<sup>2</sup> He disliked the troops under his command and regretted the army which he had led to victory at Talavera, at Salamanca and at Vittoria, an army whose faults were now forgotten, and with which he would fain have shared his final triumph. When a few months after Waterloo he gave it as his opinion that "the best troops we have, probably the best in the world, are the British infantry," he is careful to add "particularly the old infantry that has served in Spain."<sup>3</sup> Was it, then, the excellence of Wellington's

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not called out the militia either in England or Ireland; are unable to send me anything; and they have not sent a message to Parliament about the money. The war spirit is therefore evaporating, as I am informed."

<sup>1</sup> Letter to ——, Esq., August 8, 1815 (*Dispatches*, vol. viii. pp. 231-2): "The history of a battle is not unlike the history of a ball. Some individuals may recollect all the little events of which the great result is the battle won or lost; but no individual can recollect the order in which, nor the exact moment at which, they occurred, which makes all the difference as to their value or importance. Then the faults or the misbehaviour of some gave occasion for the distinction of others, and perhaps were the cause of material losses; and you cannot write a true history of a battle without including the faults and misbehaviour of part at least of those engaged. Believe me, that every man you see in a military uniform is not a hero; and that, although in the account given of a general action such as of Waterloo many instances of individual heroism must be passed over unrelated, it is better for the general interests to leave those parts of the story untold, than to tell the whole truth." Cf. letters of June 23 and September 12, 1815 (*Dispatches*, vol. viii. pp. 163, 259).

<sup>2</sup> To Sir John Sinclair, April 28, 1816 (*Dispatches*, vol. viii. p. 331).

<sup>3</sup> To Earl of Bathurst, October 23, 1815 (*Dispatches*, vol. viii. p. 285: ed. 1838, vol. xii. p. 668).

## POLITICAL INSTITUTIONS

strategy that secured the victory of an army raised in haste and of very inferior calibre? On the contrary, never had Wellington's strategy been more feeble than in the operations immediately preceding Waterloo. Perhaps the peculiar circumstances of his "situation, neither at war nor at peace, unable on that account to reconnoitre the enemy and ascertain his position by view,"<sup>1</sup> made it very difficult for him to receive information as to the movements of the French Army. But, on the other hand, he enjoyed the exceptional advantage that his theatre of action was the frontier of a country divided against itself and swarming with royalist agents, where therefore he could learn from spies all that his position made it impossible to discover by means of patrols. Whatever the reason Wellington scarcely foresaw an attack, and although on his arrival in Belgium at the commencement of April he entertained keen apprehensions on this score, they seem to have faded as the moment of the actual attack drew near. If, indeed, he foresaw an attack at all, he expected that it would be "between the Lys and the Scheldt,"<sup>2</sup> or "between the Sambre and the Scheldt," or on both lines simultaneously, or perhaps "from the front."<sup>3</sup> And after all he refused to credit the report that Napoleon would be on the frontier by June 13th. "I judged," he wrote, "from his [Napoleon's] speech to the legislature that his departure was not likely to be immediate. I think we are now too strong for him here."<sup>4</sup> And on June 15th he was engaged in arranging a combined invasion of France by the three allied armies, when he learnt that Napoleon had outflanked his left and had attacked the Prussian outposts. The battle had now begun and these raw troops, who had never yet seen war, and were regarded with contempt by their own general, atoned, by a resistance worthy of the Peninsula veterans, for the incompetent strategy of their commander. The genius

<sup>1</sup> To the Prince of Orange, May 11, 1815 (*Dispatches*, vol. viii. p. 78: ed. 1838, vol. xii. p. 375).

<sup>2</sup> Secret Memorandum, May 1, 1815 (*Dispatches*, vol. viii. p. 51: ed. 1838, vol. xii. p. 337). To General — (*Dispatches*, vol. viii. p. 21: ed. 1838, vol. xii. p. 294).

<sup>3</sup> To Lieutenant-General Lord Stewart, May 8, 1815 (*Dispatches*, vol. viii. p. 85: ed. 1838, vol. xii. p. 360).

<sup>4</sup> To General Lord Lynedoch, June 13, 1815 (*Dispatches*, vol. viii. p. 135; ed. 1838, vol. xii. p. 462).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

of Napoleon had not failed him. The plan he had formed would undoubtedly have given him the victory, could battles be won by plans. He thrust his army like a wedge between the left flank of the English Army, which he had taken by surprise, and the Prussian right flank. It was his intention to thrust Wellington's army to the left and Blücher's to the right, to crush each in turn, and then to march upon Brussels. But the spirit of his troops was no longer what it had been ten years earlier, at Austerlitz or Jena. It was now the enemy who were the most determined on victory. The Prussians, far from scattering before the onslaught, kept up an obstinate resistance, and finally retreated in good order; and the French had so lost heart that they would not pursue nor even make sure of the direction of their retreat. The British Army came off even better, repulsed Ney's attacks, and only retreated on Brussels at the news of the Prussian retreat and to avoid isolation. Of the two generals, Wellington and Blücher, who combined the retreat of both armies to concentrate them in the rear? If it was Wellington, then it must be admitted that his plans contributed to the final success, but, after all, when Blücher joined him on the evening of the 18th the French defeat was already assured, after a day of promiscuous slaughter, the details of which, according to his own subsequent avowal, Wellington had failed to grasp. "The battle," he wrote, "began, *I believe*, at eleven. *It is impossible to say when each important occurrence took place nor in what order.* . . . Repeated attacks were made along the whole front of the centre of the position by cavalry and infantry till seven at night. *How many I cannot tell.* . . . Napoleon did not manœuvre at all. He just moved forward in the old style in columns, and was driven off in the old style."<sup>1</sup> Of the Allies 22,000 men had been slain or wounded, of the French 40,000. The campaign was concluded with a truly Napoleonic celerity. The French Army broke up after Waterloo, just as the Prussian Army had dispersed, nine years before, after Jena. On June 29th the Allies arrived for the second time beneath the walls of Paris.

<sup>1</sup> *Dispatches*, vol. viii. pp. 244, 186. Letters to —, Esq., August 17, 1815, and to Lord Beresford, July 2, 1815 (ed. 1838, vol. xii. pp. 610 and 529).

## POLITICAL INSTITUTIONS

### *The Survival of Anti-Militarism.*

Victory had been won; peace seemed at length assured; and the constitutional problem called for solution. What, in time of peace, was to become of this vast standing army, the creation in its entirety of the last twenty years? Could the Government make up its mind to disband it? If, however, it were not disbanded, was it possible to keep so large a number of men under arms without endangering those anti-militarist traditions which were an essential part of the British Constitution? We may grant that on this point the fears of the Liberal Opposition appeared at first sight well founded, for nowhere else were the effects of the Tory reaction so evident. Already, in 1814, the dissatisfaction of the Whigs had found expression in Parliament. The Government had decided to keep under arms during peace a certain number of militia regiments arbitrarily selected. The scheme was denounced as unconstitutional, and was the subject of heated debates.<sup>1</sup> And the opening months of 1816 were to witness far more vehement protests. What, asked the Opposition speakers, could be the meaning of these reviews, of these parades? Why did the Regent open Parliament not, as was the custom, in civil dress, but in field-marshal's uniform and cocked hat? Why was an entire district of London put into a state of siege whenever he gave an entertainment at Carlton House?<sup>2</sup> When the Earl of Essex and Lord Milton were stopped in Pall Mall by a Horse Guard who was standing sentry and obliged to turn back, they raised a discussion in both Houses and declared the Constitution in danger.<sup>3</sup> What, again, was the significance

<sup>1</sup> H. of C., November 21 and 28, 1814, Romilly's motion (*Parl. Deb.*, vol. xxix, pp. 378, 563). Cf. May 18, 1815, Lord Folkestone's speech (*Parl. Deb.*, vol. xxxi, p. 266). It is doubtful whether or no the contention of the Opposition was legally valid. Cf. Clode, *Military Forces*, vol. i, p. 49.

<sup>2</sup> H. of C., February 28, 1816, Lord Folkestone's speech (*Parl. Deb.*, vol. xxxii, p. 965); April 10, 1816, Lord Folkestone's speech (*Parl. Deb.*, vol. xxxiii, pp. 1158, 1159).

<sup>3</sup> H. of L., April 5, 1816. H. of C., April 4, 1816 (*Parl. Deb.* vol. xxxiii, pp. 930, 950).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

of so many new institutions, all infused with a novel spirit: institutions such as the Royal Military Asylum, which received the orphans of soldiers, and trained them from infancy for service in the Army, in complete segregation from the civil population; the Royal Military College, where young men of good family were educated on the Prussian system; and the Military Club, composed exclusively of officers who wished, no doubt, to form a caste, to become a nation within the nation?<sup>1</sup>

But in reality these complaints were as silly as they were noisy. The analysis already made of the military institutions of Great Britain is their sufficient refutation. In England the regular army was not of a nature to become the tool of royal despotism. It was not the army of an autocrat, but an aristocratic, anarchic and decentralized army. Indeed, even those who denounced the new militarism did not venture to predict a *coup d'état* in the near future. Their sole complaint was that the increase in the staff put a larger number of places at the King's disposal, and thereby augmented, to use the stock phrase, "the influence of the Crown."<sup>2</sup> But that influence was itself limited. Though abuses were rampant in the British Army, they were not new. Neither King George, nor the Regent, nor the Duke of York was responsible for them. Like the abuses in all the other branches of the administration, they dated from the period of Whig rule. Far from strengthening, they paralysed the action of the Government.

A professional army, commanded by soldiers of fortune, may possibly endanger the stability of political institutions; but in England the military and political institutions were in

<sup>1</sup> H. of C., February 28, 1816, Lord Folkestone's speech (*Parl. Deb.*, vol. xxxii, p. 965). Cf. June 2, 1815, Bennett's speech (*Parl. Deb.*, vol. xxxi, p. 590).

<sup>2</sup> H. of L., March 15, 1816, Lord Lansdowne's speech (*Parl. Deb.*, vol. xxxiii, pp. 305 sqq.). Cf. Lord John Russell, *English Government and Constitution*, ed. 1823, pp. 410-11: "After the peace there were not less than 600 generals in the English service. In 1780 we had 2,000 military officers; at present we have 19,000 on full and half pay. In 1780 we had about 1,800 naval officers; at present we have about 8,400 on full and half pay; thus making about 27,000 officers in Army and Navy only." See also Lord Castlereagh's reply to these complaints, February 13, 1816 (*Parl. Deb.*, vol. xxxii, p. 455).

## POLITICAL INSTITUTIONS

perfect harmony. The same men commanded the Army and governed the State. It was by no means unusual for a country gentleman to purchase an ensign's or cornet's commission for his son—not that he might become a professional soldier, but that he might "see life," might "become a man of the world." Once the young man had attained the rank of lieutenant, he would leave the Army, marry and settle down in his native county, there to perform those administrative functions which were his by a right to all intents hereditary. Even those officers who aspired, and with success, to the higher ranks, saw with equanimity the final conclusion of peace. They knew that by right of birth they would find, either as county magistrates or as Members of Parliament, places awaiting their occupation in the ranks of civil society. They were even prepared at need to acquiesce in a reduction of the Forces. A new type of anti-militarism was now growing up, based entirely on economic—not, as formerly, on constitutional grounds.<sup>1</sup> A large army cost dear, England was overburdened with taxation and the officers who sat in Parliament—whether retired or active mattered little—were landowners as well as soldiers. They desired the abolition of the income tax and this involved a reduction of the army estimates. Attached more closely to their class than to their profession, they were thus rendered incapable of forming a distinct military party at Westminster. But without leaders the British Army could never become a Praetorian guard; and conversely, even had the officers possessed the desire to employ the Army for the repression of any movement that threatened the interests of the propertied classes, they would have needed soldiers willing to yield them blind obedience. There was, however, but little community of interest or feeling between the officers and the privates. The Army lacked *esprit de corps*. The common soldier, out of touch with his officers, and an object of distrust to the people, who regarded him either as an idle good-for-nothing living at their expense or as a particularly well armed and dangerous policeman, lost, when confronted with a riot at home, that invincible con-

<sup>1</sup> H. of C., November 28, 1814, Baring's speech (*Parl. Deb.*, vol. xxix. p. 591). H. of L., March 15, 1816, Lord Lansdowne's speech (*Parl. Deb.*, vol. xxxiii. pp. 305 sqq.).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

fidence which he had displayed so often when fighting a foreign foe. When grave disturbances broke out in London in the February of 1815, it even happened that soldiers disobeyed orders and took part with the rioters.<sup>1</sup> In spite of a defective organization the British Army had been victorious. Owing to that defective organization, the victories won by the British Army did not endanger the traditional liberties of the nation.

### FOREIGN POLICY OF THE BRITISH GOVERNMENT

#### *Britain Commands the Sea and Arbitrates on the Continent.*

There was certainly no reason of national security to prevent the English reducing their expenditure on the Army. England had now no enemies to fear. After a war extending over more than a century the power of France was at length broken. Carthage had conquered Rome. It was the triumph of British diplomacy under both its aspects; the maritime and the continental policy of England had alike proved successful.

At sea England enforced as a belligerent rights which the other nations considered tyrannical. The diplomatic representatives of Great Britain claimed for the ships of their nation the right to stop, search, seize and bring into their ports the vessels of neutral Powers, merely undertaking to release them later, if it were proved to the satisfaction of an English jury that they were not enemy's ships in disguise, and to allow them to retain their cargo, if it were also proved judicially that the cargo, like the vessel, was really neutral. England also claimed the right to establish fictitious blockades,

<sup>1</sup> Twiss, *Life of Lord Eldon*, vol. ii. p. 263: "I brought into the house by their collars two of the mob, and told them that they would be hanged. One of them bid me look to myself, and told me that the people were much more likely to hang me than I was to procure any of them to be hanged. They were sent before a J.P., but the soldiers said they would do their duty as soldiers, but they would not be witnesses." Cf. *Annual Register*, 1816, pp. 115 sqq., for the unpopularity of the English soldiers at Glasgow.

## POLITICAL INSTITUTIONS

and to order her privateers to seize any neutral vessel whose destination was supposed to be one of the ports arbitrarily chosen, though their access was not actually being blocked by a single British vessel.

The British Court of Admiralty pronounced that "Great Britain, in virtue of her insular position, *blockaded naturally* all the Spanish and French ports."<sup>1</sup> England claimed in addition the right to stop and search neutral vessels—not only merchantmen but, if necessary, even men-of-war—to discover whether there were any English deserters on board and to carry off presumed deserters, without any form of trial, to serve in the British Navy. The exercise of these rights was essential to the naval supremacy of Great Britain, and the naval supremacy to which Great Britain now aspired was itself essential to her very existence; for the time had arrived when her manufactures had exceeded her agriculture, and she was therefore compelled to obtain from abroad at least a considerable portion of her food supply. Foreign nations had protested again and again against the British claims, and with French encouragement and support had leagued together to withstand them. In the end, however, they found themselves compelled to submit. Without the British alliance they could not hope to shake off the far heavier yoke of Napoleonic despotism. At sea Great Britain claimed, and claimed successfully, absolute sovereignty. On land, however, the situation was reversed, and since all the nations of Europe, with the exception of Great Britain, were continental rather than maritime powers, the British Government was able, with every appearance of truth, to pose before the other rulers of Europe as the disinterested arbiter of international justice.

The policy of the British Government was not, nor had been since 1792, a policy of annexation. It is true that the late war had extended the British Colonial Empire. In India, a British protectorate had been imposed upon the Sultan of Mysore, upon the Nizam and upon the Mahratta confederation. The British troops had occupied Delhi, and over ninety thousand square miles of territory had been annexed. Along the coast the territories of the three presidencies had been joined up, in the interior the East India

<sup>1</sup> Fauchille, *Du Blocus Maritime*, p. 7.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Company was extending in all directions its supremacy and its influence. Ceylon, the Cape, Mauritius, Santa Lucia and Tobago were all new conquests in the Indian Ocean or in the West Indies. But we must not regard this growth of the Empire as the result of a preconceived design. It was by mere chance, indeed almost reluctant<sup>1</sup> that the British Government had made all these conquests. The disasters of the American War had rendered the policy of colonial expansion so distasteful to the English that they had even abolished the Secretaryship of State "for the Colonies."<sup>2</sup> When Pitt introduced his India Bill to enlarge the control of the Government over the East India Company, he expressly declared all projects of conquest in India "repugnant to the wish, the honour, the policy of this nation."<sup>3</sup> Later, indeed, to safeguard the factories on the coast of India from attacks by the French agents, first at Seringapatam, later on the Jumna, it was found necessary to dispatch military expeditions into the interior. When, however, a succession of wars followed, the Board of Control, the Directors of the Company and political and financial circles generally, took alarm. Orders were sent to the Governor-General, Lord Wellesley, to conclude peace as soon as possible. He resigned, and a series of treaties, provisional compromises, were botched up with the Mahratta chiefs. Or, again, consider the negotiations for peace with America. Though Great Britain would not yield an inch where her naval rights were concerned, she was prepared to abandon all claims of territorial aggrandizement. The United States were even permitted to thrust a wedge of their territory between Canada and New Brunswick. The Treaty of Paris left Martinique and Guadeloupe to France, together with her right of fishery on the Newfoundland coast, and even her factories on the shores of India, on condition that no armies were kept there. Holland received back Java, Denmark all her colonies. Even the colonies that were not given up were not retained for the sake of territorial expansion. Like the Ionian Islands, Malta and Gibraltar in Europe,

<sup>1</sup> 22 Geo. III, cap. 82, § 1.

<sup>2</sup> 24 Geo. III, cap. 25. Preamble to Art. 34. For the Indian policy of the Government subsequent to 1784 see H. of C., April 11, 1791, Lord Porchester's speech (*Parl. Deb.*, vol. xxix. pp. 125 sqq.).

## POLITICAL INSTITUTIONS

those colonies were regarded by the British statesman simply as strategic centres, or naval stations.<sup>1</sup> St. Helena, Simon's Bay and Mauritius would enable British ships on the voyage to India to take in supplies of fresh water and fresh meat.

England, however, had a large surplus population, more hands than she could employ, more mouths than she could feed. Surely it was high time to organize emigration to the new colonies, or at least to some of them. Apart from the exceptional case of Australia, a penal colony to which English convicts were deported, the British Government does not seem even to have thought as yet of this solution of the problem of over-population.<sup>2</sup> Even when in the near future a movement of emigration would take shape of itself, altogether apart from Government intervention, the Ministry would not behold it without anxiety. For the British colonists would naturally look to the Mother Country for help against the enterprises of other colonizing nations, or the attacks of the native races; and the Home Government was by no means disposed to pay for the military expeditions which the colonists would demand. The time would, moreover, come when the colonies would claim a right to self-government, a Parliament and a responsible Cabinet; and England had not forgotten the troubles occasioned by the constant disputes in the old colonies between the popular assembly and "the Council" which represented the Home Government.<sup>3</sup> Neither had she forgotten how she had

<sup>1</sup> See the debates on the Treaty of Paris, H. of C., June 29, 1814. Lord Castlereagh justified the colonial concessions made to France on the principle "that it was expedient fully to open to France the means of peaceful occupation, and that it was not the interest of this country to make her a military and a conquering, instead of a commercial and a pacific nation." He defended the annexation of Mauritius "not on account of any commercial advantages resulting from its possession, but because in time of war it was a great maritime nuisance, highly detrimental to our commerce. In the two past wars, the injury to our commerce by the occupation of the Mauritius on the part of the enemy, as a cruising station, was incalculable" (*Parl. Deb.*, vol. xxviii. p. 462).

<sup>2</sup> A solution already being urged by the Malthusians (*Quarterly Review*, vol. xii. p. 41, October 1814, art. on Australia).

<sup>3</sup> *Memoirs and Correspondence of Lord Castlereagh*, vol. viii. p. 198. Letter to the Duke of Manchester, February 11, 1809: "The pretension of the Assembly" (of Jamaica) "to all the

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

lost already the larger part of her North American colonies.

To prevent a repetition of that disaster the British Government struggled to maintain as strict a control as possible over the newly acquired colonies.<sup>1</sup> In the intention of the Ministry, these colonies were never to be more than fortified positions under military control. No doubt the governing aristocracy profited from the extension of the Colonial Empire, where lucrative sinecures were plentiful; but that aristocracy was subject to the constant pressure of middle-class opinion—the opinion not only of manufacturers and merchants, but of the entire body of investors. The colonial sinecures were denounced like all other sinecures, and like them were threatened with abolition.<sup>2</sup> In short, despite so many naval victories, the England of 1815 showed no signs of "imperialism."

Still less did she entertain the desire to make conquests on the Continent of Europe. The King of England was now once more King of Hanover; but the union of the two Crowns was soon to cease; nor did his Ministers allow the English Sovereign to make use of the power of Britain in the interest of his German electorate. The British Government claimed to play on the Continent the part of an impartial mediator. Throughout the war England had interpreted her belligerent rights in the sense most favourable to the inhabitants of the country under invasion and most inconvenient to herself. She had never permitted her armies to

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rights and privileges of the House of Commons is quite absurd; they have no other privileges than those naturally arising out of or connected with the colonial and limited purposes for which, by the *act of the Crown*, they have been created. The control of the Army does not belong to them. Inquiries on their part into the conduct of military officers, in the sense the Commons inquire at home, are quite foreign to their jurisdiction." For difficulties of the same sort at Barbadoes 1818-1820, see *Memoirs and Correspondence of Lord Combermere*, vol. i. pp. 256 sqq.

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, p. 260.

<sup>2</sup> For these colonial sinecures see the *Second Report . . . on Sinecure Offices*, June 18, 1811, and especially the *Third Report* Bill, April 23, 1812; also the Debates on the Colonial Offices Bill, H. of C., March 22, 28, 29, April 18, 25, May 6, 1814 (*Parl. Deb.*, vol. xxvii. pp. 339, 365, 375, 434, 522, 731).

## POLITICAL INSTITUTIONS

live, like Napoleon's, at the expense of the country.<sup>1</sup> They were either obliged to purchase with ready money the necessary provisions, or these were brought by sea at no slight expense. On the conclusion of peace England intervened between the victors and the vanquished. In 1814 she had obtained the signature by the Powers of a separate treaty with France—that the French Government might be reconstituted in time to be represented at the Congress of Vienna, and to take part in the settlement of Europe. At Paris, both before and after the Hundred Days, Wellington constituted himself the protector of the French whom he had conquered, and opposed on their behalf the brutality of the Prussian troops and the unreasonable demands of the Prussian diplomats.

Not a soul in Europe, however, with the possible exception of a handful of Liberal statesmen and publicists, showed any real gratitude to England for her policy of arbitration. The very impartiality put forward so ostentatiously by the English appeared somehow cold and unsympathetic. Brought face to face with the English, all the other peoples of Europe—Frenchmen and Spaniards, Latins, Teutons and Slavs—were conscious of a common bond, they felt that the wars which had divided them during the past twenty-five years were after all civil wars; and asked themselves by what right a foreign nation interfered in their quarrels, to lecture them on morals and statesmanship. The British troops were often disconcerted to find themselves the object of general dislike in the very country which they had just liberated, while with the process of time the memory of French rule was losing its bitterness.<sup>2</sup> How to calm the obstinate suspicion of Continental Governments and peoples was a problem which embarrassed the English diplomats, and it was complicated by another problem. In England, as in no other European country, public opinion was alert and ready to criticize the actions of the Government. England was the sole country in which, according to constitutional forms universally respected, the entire policy of Europe

<sup>1</sup> Not even in India. See Alison, *History of Europe*, vol. xi. pp. 108-9.

<sup>2</sup> Foy, *Guerre de la Peninsule*. Brenton, *Naval History*, vol. iv. pp. 117 18.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

was the daily subject of a public debate.<sup>1</sup> Though the Tories were in power, she remained *par excellence* the free country among the nations of Europe. English diplomatists were at times able to profit by the pressure thus exerted upon them by public opinion. They could on occasion protract negotiations, and declare themselves powerless to come to any definite agreement until the matter had been referred to London and they were assured of the support of Parliament. More usually, however, they found the control of public opinion a burden and a weakness. It made it difficult for them to arrive at the most suitable formulæ to define the new settlement of Europe.

### *The European Problem: its Difficulty.*

Was it simply a question of "restoring" the state of Europe previous to 1792, of re-establishing on their thrones all the "legitimate" dynasties, and thus obliterating as completely as possible every memorial of the long period of revolutionary upheaval, of maintaining the mutual independence of the nations, and of preserving intact the old political and religious traditions? Such was, indeed, the desire of the Allies in 1814 and 1815; but difficulties were raised in London. The anti-Jacobin party in England had been formed by a coalition of the Tories and the great majority of the Whigs. The political philosophy of the new coalition had been formulated by a Whig. According

<sup>1</sup> Sir James Mackintosh to Horner, Paris, December 12, 1814: "Nobody can be here without feeling the great hatred entertained against us by all ranks and parties. It has been a little abated during the last three weeks by the debates of the House of Commons, which have been more important, and I hope more beneficial, on the Continent, than at any former period of our parliamentary history. The general Continent wanted an organ, and the only popular assembly in Europe partially supplied it. You gave the sanction of a public body to the principles of common sense; and you have certainly contributed to all the success which may attend Talleyrand in his new office of assertor of justice and protector of weakness" (*Memoirs and Correspondence of Francis Horner*, vol. ii. pp. 223-4). On his return to London, Mackintosh made use of practically the same expressions in his important speech in Parliament on April 27, 1815 (*Parl. Deb.*, vol. xxx. p. 891).

## POLITICAL INSTITUTIONS

to Burke and his school equality was synonymous with tyranny, aristocracy with freedom. A century after the death of Louis XIV, the British upper classes could still believe that in defending their privileges they were defending the liberties of the nation and the political freedom of Europe. English "legitimism" was a totally different thing from Continental legitimism.

In the train of the British armies the system of parliamentary government had spread throughout the whole of Western Europe. The national pride even of the Tories was flattered by the adoption in turn by Sicily, Spain, France, and Holland of Constitutions modelled on the Constitution of Great Britain.<sup>1</sup> They had certainly some hesitation in believing that the peoples of the Continent were worthy to receive, or even capable of understanding, institutions of such sovereign excellence. They considered the Sicilian Constitution too oligarchic,<sup>2</sup> the Constitution of Cadiz too Jacobin,<sup>3</sup> and feared that the French Parliament would prove but a clumsy imitation of the Parliament of Westminster.<sup>4</sup> But if the awkwardness of Continental attempts

<sup>1</sup> H. of C., June 29, 1814, Canning's speech (*Parl. Deb.*, vol. xxviii. p. 451).

<sup>2</sup> Mr. A. Court to —, Palermo, January 5, 1815 (*Memoirs and Correspondence of Lord Castlereagh*, vol. x. p. 237). Lord Sheffield to Abbot, November 6, 1812 (*Diary and Correspondence of Lord Colchester*, vol. ii. 408-9). Cf. a curious memorandum by an anonymous writer printed among Lord Castlereagh's letters (vol. viii. pp. 217 sqq.). It dates from the year 1810 and is entitled *Some Account of the Present State of Sicily*. The author advocates the introduction into Sicily and the other Mediterranean islands of popular institutions under a species of British protectorate.

<sup>3</sup> For a discussion of this Constitution, see the *Edinburgh Review*, September, 1814, Art. 5, *Cortes of Spain* (vol. xxiii. p. 361). See also Lord Castlereagh's letter to Sir Henry Wellesley, Paris, May 10, 1814 (*Memoirs and Correspondence of Lord Castlereagh*, vol. ix. p. 462); also Wellington to Lord Bathurst, January 27, 1813 (*Dispatches*, vol. vi. pp. 255-6).

<sup>4</sup> E. Cooke to Lord Castlereagh, Foreign Office, April 14, 1814: "Such a House of Lords! without family, property, character." For the Upper House, cf. Lord Castlereagh's letter to Lord Liverpool, Paris, April 20, 1814 (*Memoirs and Correspondence of Lord Castlereagh*, vol. ix. p. 481); also Wellington to Dumouriez, Paris, November 26, 1814: "Everything is new here, and, as you know, new things, especially when they are of a complicated nature, do not work well. . . . Everybody is poor

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

at parliamentary government inspired the English Tory with feelings of scornful condescension, the brutal depotism of the newly restored monarchs filled him with disgust and horror. It was in Spain that the British policy was most completely stultified. Ferdinand VII restored the Inquisition, abolished the Constitution, and imprisoned or executed the leading Liberals, the very men who admired most fervently the fundamental principles of English political and social life. To re-establish his depotism the Spanish King employed troops paid with British gold and led by British officers. The Opposition at Westminster raised violent protests, and the Ministry scarcely dared to defend their action.<sup>1</sup> They were well aware—their ambassador at Madrid had informed them of it<sup>2</sup>—that every success of absolutism in the Peninsula was so much loss to British influence. Already in 1815, before the time of Canning and the revolt of the Spanish colonies, an incompatibility of principle was evident between England and her Allies of 1813. Scarcely four months after Waterloo the rulers of the great Continental Powers asked the Prince Regent to sign the agreement, known as the Holy Alliance. Lord Castlereagh, to whom the communication of their request had been entrusted,

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and, what is worse, their institutions prevent any family becoming wealthy and powerful" (*Dispatches*, vol. xii. p. 192, translated from the French). See also in the *Edinburgh Review*, September, 1814, Art. II, *Paris in 1802-4* (vol. xxiii. pp. 483-4), extracts from the journal of an English traveller in Paris. See further the *Diary of Lord Colchester* (kept during his stay at Paris), October 9, 1815: "Arbuthnot brought me a string of questions proposed by the French Ministers, about the principles and forms and examples of managing the practical part of the English Government, proving their entire ignorance of the subject." October 11th: "Heard an authentic and curious account of the state of the French Ministry, and their utter ignorance of all the forms and principles of the British Government which they profess to emulate" (vol. ii. p. 557).

<sup>1</sup> The Cabinet even admitted that were any intervention in Spain admissible, it would be against absolutism. H. of C., November 15, 1814, Mr. Baring's motion for papers relating to Spain. Wellesley Pole's reply (*Parl. Deb.*, vol. xxix. p. 200).

<sup>2</sup> *Memoirs and Correspondence of Lord Castlereagh*, vol. x. p. 509 sqq. Cf. vol. x. pp. 25-6, Lord Castlereagh to Sir Henry Wellesley, May 10, 1814.

## POLITICAL INSTITUTIONS

expressed his regret that he was compelled to lay before a British Sovereign "this piece of sublime mysticism and nonsense." After deliberation the Cabinet declared itself unable to advise the Regent to give his adhesion. It was unconstitutional for the Sovereign to conclude on his own responsibility an alliance with a foreign monarch. His power was confined to the ratification of a treaty concluded in due form, signed already by a plenipotentiary and to which the great seal had been affixed.<sup>1</sup>

The foreign policy of the Tory Government was confronted with fresh difficulties when it came to rearranging the map of Europe. An exact restoration of the territorial arrangements previous to 1792 did not present itself, even to the English Cabinet, as a prudent policy. The galaxy of petty States in Western Germany and Northern Italy had long exposed Central Europe to French influence and invasion. If the balance of power in Europe were to be maintained, it was essential that a barrier of States should be set up sufficiently large to offer a serious resistance to France. In other words, that policy of "territorial groups" which Napoleon had employed in favour of France must now be employed against her. In agreement with the rest of Europe, Great Britain demanded that the Scheldt should be opened to free navigation, that Antwerp should be declared a free port, and that the Spanish Netherlands should form one kingdom with Holland. But when these points had been secured, neither the British Government nor the British public had any interest in bringing about the universal absorption of petty States by their more important neighbours. The indifference of Great Britain formed a striking contrast to the greed displayed by Russia, Prussia and Austria. Nor did the Opposition speakers fail to exploit this indifference. They refused to recognize in the new States, artificially created by international diplomacy, the free countries, the collective persons which Britain had defended against the aggression of Napoleon. In language of the most pronounced conservatism, Mackintosh pronounced the panegyric of "the ancient and magnificent system" which had been bestowed on Europe by the Peace of Westphalia, and preserved intact until the partition of

<sup>1</sup> Yonge, *Life of Lord Liverpool*, vol. ii. pp. 226 sqq.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Poland and the French Revolution. He complained that, despite the overthrow of Napoleon, the Napoleonic system was still maintained—the sole difference being that the dictatorship of Europe, then wielded by a single man, was now in the hands of a triumvirate.<sup>1</sup> The Ministers questioned could find nothing to reply.

Public opinion was first aroused by the Norwegian question. In virtue of an agreement concluded with England, Bernadotte had obtained as the price of his defection the separation of Norway from Denmark and its annexation to Sweden. The Norwegians thus delivered to a new master rose in arms. Had not the Swedes effected a speedy conquest of Norway, it is extremely doubtful whether Parliament would have permitted the British Government to fulfil the terms of the treaty by giving active assistance to the Swedish Army.<sup>2</sup> The annexation of Genoa by Piedmont next kindled popular indignation, an indignation the more intense because Lord William Bentinck, the British plenipotentiary in Italy and a convinced Whig, had lavished on the Genoese the most solemn promises of liberty.<sup>3</sup> As regards Germany, the King of Prussia had concluded an

<sup>1</sup> H. of C., April 27, 1815, motion relating to the transfer of Genoa (*Parl. Deb.*, vol. xxx. pp. 891 sqq.). Cf. Whitbread's speech, February 9th and 13th, March 6th (*Parl. Deb.*, vol. xxix. pp. 697, 726, and vol. xxx. p. 13). We should notice also Ponsonby's exclamation during the debates of February 13th, when the Chancellor of the Exchequer refused to reply: "Mr. Speaker, I wish you would cast your eyes upon that bench, and say if there is a single person there who dares contradict what has been asserted. And if you do cast your eyes upon them, I should be glad to know what your emotions are—whether you most pity or condemn them? (Hear, hear and laughter.)"

<sup>2</sup> See Lord Liverpool's letters to Castlereagh and Wellington, September 2, 1814 (Yonge, *Life of Lord Liverpool*, vol. ii. pp. 212, 24). For the Norwegian question, see *Edinburgh Review*, April 1814, No. 45, Art. 4, *Transference of Norway* (vol. xxiii. pp. 102-3).

<sup>3</sup> H. of C., February 13, April 27, 1815, and April 7th. Papers relating to Genoa, presented by command of the Prince Regent (*Parl. Deb.*, vol. xxix. pp. 727 sqq.; vol. xxx. pp. 901 sqq. and 387 sqq.). For the part played by Lord William Bentinck in Sicily, see *Court of England under the Prince Regent*, vol. i. pp. 199, 200. Compare also the councils of moderation addressed to Lord William by Lord Castlereagh, April 3 and May 7, 1814 (*Memoirs and Correspondence of Lord Castlereagh*, vol. ix. pp. 429 sqq.; vol. x. p. 18).

## POLITICAL INSTITUTIONS

agreement with his close ally, the Emperor of Russia, to divide the possessions of the King of Saxony, who to the very end had refused to join the Allies. According to the terms of this arrangement Russia was to secure the Grand Duchy of Warsaw, Prussia, Saxony itself. This compact threw out of gear all the calculations of British diplomacy; for Great Britain had no desire to see this increase of Russian influence and territory. Was there not reason to fear lest the Tsar, now become so powerful by the downfall of France, would ally himself with the United States to defend the rights of neutrals at sea? Might he not cherish designs of conquest in Turkey, perhaps even in India?<sup>1</sup> What the English Cabinet would really have liked, was a close alliance with Prussia and Austria, since these two Powers formed a barrier between Western and Eastern Europe. Since this was impossible, the Ministry was forced to be content with an agreement with France and Austria against Russia and Prussia. In the early months of 1815 a treaty of alliance was signed with the two former Powers. A joint military demonstration, perhaps even an expedition, was expected; but further difficulties arose. In Italy Murat had succeeded in keeping his throne, with the support of Austria—which not only gave him a formal guarantee of undisturbed possession, but even promised him an increase of territory in the north. England and France, however, feared the possibility of a secret understanding between Murat at Naples and Napoleon in banishment at Elba, and desired the restoration of the Bourbons to the Neapolitan throne, as being at once clients of the British Government and relations of Louis XVIII. Public opinion in London made use of all these questions of foreign policy, which threatened to cause a war at any moment, as pretexts for criticism of the Cabinet. In January Lord Castlereagh, the English plenipotentiary at Vienna, was hurriedly recalled. A session of Parliament was about to open, the political situation was extremely difficult, and the Ministry dared not face the debates unless Lord Castlereagh were present in person to justify his diplomacy to the Commons.

<sup>1</sup> *Quarterly Review*, October, 1815, *Elphinstone's Account of Caubul* (vol. xiv. pp. 154-5). The writer of the article, however makes light of such fears.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Was an outbreak of war really imminent during the early months of 1815? The British Cabinet, at any rate, were most strongly opposed to war, and whenever Wellington at Paris, or Lord Castlereagh at Vienna, displayed any inclination towards a war or even an offensive alliance, Lord Liverpool wrote from London to urge a more peaceful course. "There is no mode," he wrote, "in which the arrangements in Poland, Germany and Italy can be settled consistently with the stipulations of the Treaty of Paris which is not to be preferred, under present circumstances, to a renewal of hostilities between the Continental Powers."<sup>1</sup> For any war that might break out in any part of Europe would very soon become general and kindle a revolution. At the close of 1814, Lord Liverpool still hoped that two or three years of peace would suffice to calm the excitement of popular feeling throughout Europe, and that diplomats would then again be able, without peril to the established order of society, to provoke "a war . . . not different in its character and its effects from any of those wars which occurred in the 17th and 18th centuries, before the commencement of the French Revolution."<sup>2</sup>

The Hundred Days shattered the illusion. All the rulers of Europe agreed with one consent to weaken France, to impose upon her a heavy war indemnity, to narrow her frontiers, to plant garrisons on her territory. All divergencies of interest were obliterated by the common dread of Napoleon. The peace of Europe was thus securely established. The epoch of dynastic wars had gone by. Nor would even the democratic Opposition demand a war for the emancipation of the peoples of Europe from the despotic rule of the league of monarchs. In fact, the desire for a policy of peace and retrenchment was universal. The majority even of the

<sup>1</sup> Lord Liverpool to Lord Castlereagh, December 23, 1814 (Yonge, *Life of Lord Liverpool*, vol. ii. p. 85).

<sup>2</sup> Lord Liverpool to Lord Castlereagh, September 25, 1814 (Yonge, *Life of Lord Liverpool*, vol. ii. p. 31). He expresses himself in practically identical terms in a letter to Wellington which is attributed by Yonge to the month of November (vol. ii. pp. 81-2). Cf. letters of Lord Liverpool to Wellington, September 2, 1814; to Lord Castlereagh, November 2, 1814, and December 23, 1814; to Wellington, December 31, 1814 (Yonge, *Life of Lord Liverpool*, vol. ii. pp. 24, 29, 51, 100).

## POLITICAL INSTITUTIONS

Ministerialists supported the Opposition against the Cabinet in their demand that the heavy burden of taxation should be alleviated. Such an alleviation was not, however, feasible so long as the British Army was maintained on a war footing, and subsidies were paid to Continental Powers. "Very few persons give themselves any anxiety," wrote Lord Liverpool on January 16th to Lord Castlereagh, "about what is passing at Vienna, except in as far as it is connected with expense." Again, on February 20th he insists in an alarmist letter: "Many of our best friends think of nothing but the reduction of taxes and war establishments. The country at this moment is peace mad."<sup>1</sup>

### *The Weakness of the Executive.*

The preceding observations have abundantly proved that the constitution of the British Government about the year 1815 must be regarded, despite the reactionary tendencies of the Tories, as essentially free.

We are to understand by this, in the first place, that the various branches of the administration constituted together a system of securities against bureaucratic centralization and military despotism; for their nature rendered it impossible for the head of the executive to employ a handful of bureaucrats to oppress the majority of his subjects. England was a nation richly provided with the means of war, but her principal arm of warfare was her navy, and no navy, however strong, can ever be a source of danger to public liberty. And although the English had reluctantly yielded to the pressure of circumstances and now maintained a large standing army, this army of mercenaries had neither the means nor the desire to seize the reins of government and alter the Constitution. When, however, we say that England was, in the sense above defined, a free country, we are far from terming it a democracy. Such a definition would, indeed, be widely remote from the truth. To be sure, the British aristocracy was very open, for it was constantly

<sup>1</sup> *Memoirs and Correspondence of Lord Castlereagh*, vol. x. p. 241; *Supplementary Dispatches of . . . Wellington*, vol. ix. p. 573.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

receiving new accessions from the Bar, the Army and commerce. Nevertheless, it was essentially an aristocracy of wealthy landed proprietors, who controlled both the central and the local government of the country. Hence the progress of democratic institutions during the 19th century necessarily followed, in England, a course very different from that which it was to follow in the other countries of Europe. On the Continent the bureaucratic State was already in being, and nothing more was required than the transference to other hands of this pre-existent machinery and its employment for novel purposes. In England the machinery itself had to be created.

Nevertheless, in terming it aristocratic we have not given a sufficient definition of the English system of government. Though predominantly aristocratic, it was not undiluted aristocracy. We have already had occasion to remark the presence in the British Constitution of influences which counteracted the influence of the ruling aristocracy, for all its firm grasp of power and greedy appropriation of the prizes of government. The aim of the Whig campaign for the reform of administrative abuses which opened about the year 1780, was to deprive the Crown of one of the sources of its power and thereby to fortify indirectly the political privileges of the aristocracy. Since, however, it was that very aristocracy which profited so largely by these abuses, it lost at least as much as the monarchy lost by the progress of administrative reform. A force from without, the pressure of public opinion, pushed the reformers forward and carried them further than they would ever have been led by considerations of private interest. Our study of the foreign policy of Great Britain has shown that English diplomats and statesmen, from the very fact that they had been nurtured in the tradition of self-government and were members of a ruling aristocracy, viewed with uneasiness the despotic tendencies of the Continental monarchs. And it happened very frequently in their dealings with the Continental nations that they found themselves compelled, by the pressure of public opinion, to show sympathy with a democratic policy by no means in harmony with the interest of their class. And we have also seen how in the provinces the system of aristocratic self-government left public opinion a partial

## POLITICAL INSTITUTIONS

control over local government. For the landowners had at their disposal neither police nor military force to defend them against insurrection. To assure the permanence of the existing system, therefore, they were obliged to take account of the opinion of those whom they governed. Nor is this all that can be said. The control exerted over the governors by the governed found further expression in a number of positive institutions, which formed part of the Constitution of the Kingdom. To these we have already made passing allusion; we must now undertake their detailed analysis.



## CHAPTER II

### THE LEGISLATURE AND THE SUPREMACY OF PUBLIC OPINION

#### THE REPRESENTATIVE SYSTEM OF THE UNITED KINGDOM

*The Different Possible Forms of Popular Self-Government.* THREE, and only three, possible methods are conceivable by which a people could govern itself. The entire body of citizens might meet as frequently as possible to pass laws and to nominate officials to execute the laws. This is government by public meeting, the direct government of the people by the people. Or a limited number of individuals might be designated by lot, or selected according to any kind of predetermined order—according to seniority, if you like, for that would serve the purpose as well as anything else. Those chosen few would discharge in turn the functions of government. This would be government by rotation. Or again, the entire body of citizens might assemble, at fairly distant intervals, not to legislate or appoint the executive, but to elect a certain number of representatives who, until the next election, would discharge with greater continuity the functions which, according to the first alternative, the popular assembly would have performed directly. This is representative government. All these three forms of government existed side by side in the British Constitution at the beginning of the 19th century.

Direct government of the people by the people is adapted only to the very elementary needs of very small communities. We are not, therefore, surprised to find this form of government persisting in the meeting, whose president was a meadsman, a common herd, a fieldsman or an overseer, and whose function it was to regulate the cultivation of the common and of the parish.<sup>1</sup> The meeting was perhaps the final relic of a constitution of society anterior to the feudal

<sup>1</sup> Webb, *English Local Government*, vol. ii. pp. 128 sqq.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

system. It was, moreover, a survival which lost constantly in importance, as the organization of society became more complicated, and was even on the way to vanish completely, since the avowed object of legislation was now to vest the ownership and cultivation of the soil entirely in the hands of individuals. But we are more surprised to discover that the constitution of the parishes themselves, those small units of local government into which the whole of England is divided, was also based on the principle of government by public meeting. The parish was administered by five officials, who together constituted the parochial executive—the churchwardens, the constable, the surveyor of highways, and the overseer of the poor—and by an assembly, the vestry meeting, a meeting of all those interested in the government of the parish. This assembly exercised a control over the actions and the expenditure of the executive, and in certain cases nominated these officials, or at least took part in their nomination. The vestry, which owed its name to the fact that it met regularly in the vestry of the parish church, naturally played a very important part in the choice of the churchwardens. These were partly secular, partly ecclesiastical officers, responsible both to the ordinary of the diocese and to the parochial meeting. While it was their duty to keep the church accounts, they also took part in the local police, and in the administration of the Poor Law. The vestry also drew up the list of substantial persons, from which the magistrates selected the surveyors of highways.

In the vast majority of rural or semi-rural parishes the line of cleavage between those who paid the local rates—the farmers and shopkeepers—and the agricultural labourers who did not pay them, was sufficiently distinct to make it easy to exclude the latter from the vestry meeting. Under those circumstances the parochial assembly would be composed of a small number of persons, who were usually, as tenants, dependent on the class from which the magistrates were taken. It is, nevertheless, highly significant of the limitations imposed upon the authority of the magistrates that these officials had always left to the small tenantry settled on their estates the right to share with themselves the administration of the local finances. In the large urban

## POLITICAL INSTITUTIONS

parishes one of two things happened. In some places the great mass of ratepayers took no interest in local affairs and left their entire management in the hands of the parish officers, who were appointed by co-optation under the control, more or less effective, of the magistrates. A primitive form of democracy had degenerated into oligarchy.<sup>1</sup> Elsewhere the inhabitants did not allow the rights of nomination and control, conferred upon them by immemorial custom, to fall thus into abeyance. Since, however, no written law or fixed precedent determined whether the right to take part in the vestry meeting belonged to all the inhabitants, or solely to the ratepayers, all attempts at distinction were abandoned when the ratepayers were counted by thousands and where class distinctions had been obliterated. During the economic crisis which followed the restoration of peace in 1815, the inhabitants of several large towns were brought by skilful agitators to realize that it was in their power, by demanding a return to the traditional constitution of the vestry, to restore the annual control of the local budget to an assembly of all the inhabitants of the parish, perhaps even to invade prerogatives which the magistrates and their administrative subordinates had come to consider by every right their own.<sup>2</sup> These petty local revolutions, which were now to take place here and there throughout the country, and against which the magistrates had no legal weapon, would so dismay the ruling class, that laws would be passed to facilitate the transformation of open into select vestries—that is to say, the substitution of a representative system for government by public meeting.

Like the direct government of the people by the people, government by rotation, in which each of the governed is called in turn to discharge the functions of legislator or executive official, would seem adapted only to societies of very small size and of rudimentary structure. Therefore we shall not be astonished to find this form of government in certain institutions, which were survivals from a primitive state of society. Take, for instance, the organization of the parish and the choice of the parochial officers. According to a very ancient tradition, which seems to have been regarded

<sup>1</sup> Webb, *English Local Government*, vol. i. pp. 61 sqq.

<sup>2</sup> *Ibid.*, vol. i. pp. 91 sqq.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

everywhere as possessing the force of law, in default of a special custom to the contrary, all the parishioners, or at least all the men of substance in the parish, discharged in rotation the functions of local government.<sup>1</sup> Or take the ancient manorial institutions. The essence alike of the court-baron and of the court-leet was a jury discharging functions at once legislative, executive and judicial. This jury was composed of at least twelve men of substance, chosen either by rotation or by lot.<sup>2</sup> Or again consider the organization of the counties. The "Court of Quarter Sessions" was assisted by a "Grand Jury," and this not only in the performance of its strictly judicial functions but even in its administrative capacity. Without a presentment of the jury, the assembled justices were unable even to order the necessary expenditure for the repair of a prison or of a bridge. England was a museum of constitutional archæology where the relics of past ages accumulated. But the very mention of the word jury is sufficient to make us realize that in the British Constitution government by rotation was much more than a mere archæological curiosity. There was a jury at the Assizes alike in civil and in criminal cases. The jury system is, indeed, one of the fundamental institutions of English society. Historians derived its origin from the period of the Saxon Kings. And it was, they asserted, to be found clearly formulated in *Magna Charta*. Once universal throughout the Continent, it was only within the past century that it had been abolished in Sweden. In the near future it would be revived everywhere under the influence of the sole country which had been able to preserve its life and prestige unimpaired. In the eyes of Blackstone trial by jury was the palladium of British freedom, the guarantee of its imperishability. If Athens, Carthage

<sup>1</sup> S. and B. Webb, *English Local Government*, vol. i. p. 16. Cf. Toulmin Smith, *The Parish*, Preface: "The business of the Parish does not concern only the rates and taxes that every man has to pay. It concerns the daily comfort, convenience and health of every man, rich as well as poor. Moreover, every man is bound to serve Parish Offices in turn. Nothing can, then, be more necessary than an accessible account of the Parish and its relations."

<sup>2</sup> Webb, *English Local Government*, vol. ii. pp. 15, 23; Gneist, *Verfassungs und Verwaltungsrecht*, vol. ii. p. 167.

## POLITICAL INSTITUTIONS

and Rome had lost their liberty, it was due solely to the absence of the jury system.<sup>1</sup>

In civil cases the law provided that twelve jurors should be chosen by lot from a list made up for each session of the Assizes, and containing from forty-eight to seventy-two names. Very extensive rights of challenge were granted to the contending parties. Once constituted in due form, the twelve jurors heard the speeches of counsel, the evidence and the judge's summing-up. After this they retired into an adjoining room, where "in order to avoid intemperance and cause less delay" they were "kept without meat, drink, fire, or candle, unless by permission of the judge, till they were all unanimously agreed."<sup>2</sup>

In criminal cases the law almost always demanded that before this jury of twelve, the petty jury, entered upon its task, a grand jury of twenty-four members should have previously examined and preferred the indictment. And a further precaution was taken. The coroner, who inquired into cases of violent or sudden death, could only conduct his inquest as the president of a jury. The jurors were not, strictly speaking, judges; for here also the British Constitution was true to its mixed character, and gave one part of the decision to professional magistrates who determined the question of law, another part to the jurors who were called upon to determine the question of fact. But the line between fact and law was not always so easy to draw. A masterful judge would, in his summing-up, put the question of fact to the jurors in language so skilfully manipulated as to leave the jury no real share in the final decision. An indolent judge would, on the contrary, contrive so to confuse the questions of law and fact as to throw as far as possible upon the jury the entire responsibility for the verdict.<sup>3</sup> The war waged between the Crown and the Press throughout the latter half of the 18th century turned entirely on this difficulty. Was the question before the jury whether the article incriminated was, or was not, in fact, libellous?

<sup>1</sup> 3 *Comm.* 379. Cf. Montesquieu, *Esprit des Lois*, Book II, chap. vi.; 4 *Comm.* 343-4.

<sup>2</sup> Blackstone, 3 *Comm.* 375.

<sup>3</sup> Campbell, *Lives of the Chancellors*, vol. v. p. 443 (*Life of Lord Bathurst*).

## A. HISTORY OF THE ENGLISH PEOPLE IN 1815

Or were they merely asked to decide whether the journalist accused was, as a matter of fact, the author of the article incriminated, the further question of its libellous character being a question of law and therefore coming within the province of the judge? Finally Parliament intervened and settled the doubt in the sense most favourable to the pretensions of the jury.<sup>1</sup> It is remarkable that throughout the debates the speakers of both parties vied with each other in their zeal for the maintenance of the rights of the jury. Even during the period of anti-Jacobin reaction which followed, these rights were never the object of serious attack. Although Lord Eldon had no love for juries, he found himself obliged in public to pronounce their panegyric.<sup>2</sup> Far from decaying, the institution spread. In 1815 it was extended to civil cases in Scotland.<sup>3</sup>

The jury system, and certain customs closely bound up with it, gave to English trials an appearance which shocked the foreign visitor, accustomed, as he was, to the formality of Continental courts. When the Westminster judges on circuit arrived at a county town, all the local society came to meet them. A season of festivities began for the county, in which the trials were an afternoon diversion. "Everything," wrote the Frenchman Cottu, "breathes a spirit of levity and mildness. The judge looks like a father in the midst of his family occupied in trying one of his children. His countenance has nothing threatening in it. According to an ancient custom, flowers are strewed upon his desk and upon the clerk's. The sheriff and officers of the court wear each a nosegay. By a condescension sufficiently extraordinary, the judge permits his Bench to be invaded by a throng of spectators, and thus finds himself surrounded by the prettiest women of the county—the sisters, wives or daughters of grand jurors. . . . They are attired in the most elegant *négligé*; and it is a spectacle not a little curious to see the judge's venerable head loaded with a large wig, peering among the youthful female heads."<sup>4</sup> The English

<sup>1</sup> 32 Geo. III, cap. 60.

<sup>2</sup> Campbell, *Lives of the Chancellors*, vol. v. pp. 66-7, 104.

<sup>3</sup> 55 Geo. III, cap. 42. See Cockburn, *Life of Jeffrey*, vol. i. p. 240.

<sup>4</sup> Cottu, *Administration de la Justice Criminelle en Angleterre*, pp. 107-8, trans. Miller.

## POLITICAL INSTITUTIONS

were not always so enthusiastic. Edgeworth relates in his *Memoirs*<sup>1</sup> that at Oxford, where it was the custom of the undergraduates to invade the court and create a scene of incredible uproar, he was compelled to intervene to save a prisoner who merely in consequence of the din was on the verge of an unjust and illegal condemnation. "It is," wrote another Englishman, "rather too much to see the ladies putting on their bonnets in the morning, to look at the judges and hear the prisoners condemned to death, and then take them off again to prepare for the dance at night. One would not expect that they should return home to eat no dinner; but, without incurring the charge of any mawkish sentimentality, one may be permitted to feel something revolting in the very name of an assize-ball."<sup>2</sup> Objectible or not, the custom reveals the real significance of the jury system, namely, that it is essentially trial *per patriam, per paup*, by the country, to use the traditional term. England desired the public to assist the judges in the administration of justice. Most certainly professional judges would know the law better than judges picked up for the occasion, but would they have the same interest in the protection of the rights of the subject? If they were permitted to dispense justice alone, what guarantees would the public possess against their cruelty, despotism or pedantry? Trial by jury carried out the principle underlying all popular government—control of efficiency by interest. Certainly we must not leave out of consideration the rules which determined the composition of the list out of which the jurors were chosen by lot. It was the sheriff, himself nominated by the King on the presentation of the magistrates, who drew up this list. Then was the time to eliminate all who did not belong to the governing aristocracy; and although the law prescribed no pecuniary qualification for members of the Grand Jury at the Assizes, they were in reality always taken from the local gentry.<sup>3</sup> Now, if this is the case, must

<sup>1</sup> *Memoirs of R. L. Edgeworth*, vol. i. pp. 95-7.

<sup>2</sup> R. Ayton, *Voyage round Great Britain*, vol. ii. p. 108.

<sup>3</sup> This no doubt occasioned the attacks directed by advanced Liberals against the Grand Jury. See, for instance, *Edinburgh Review*, December 1828, No. 96, Art. 5, *Police of the Metropolis and Prevention of Crime* (vol. xlvi. pp. 415-16).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

we not rank the jury system among the institutions employed by the aristocracy to defend their position against encroachments of the Crown officials, but unable to exercise any check on oppression by that aristocracy itself? Let us beware of exaggeration.

In the first place, what is true of the Grand Jury at the Assizes is not true of the Grand Jury at Quarter Sessions. In this latter case, while the aristocracy judged, the Grand Jury was taken from the middle class.<sup>1</sup> And, again, what is true of the provinces, especially those truly rural, is not true of the great urban centres. There the landed aristocracy took no interest in public life, and abandoned judicial functions to the middle, even to the lower middle class.<sup>2</sup> And, further, what is true of the Grand Jury is not true of the Petty Jury. From members of the Petty Jury the law demanded only the freehold property of land producing an annual income of at least £10 a year, or a life tenancy at a rent of at least £20. And since the work of a jurymen made no small demand on time, and there existed many legal methods by which a man could have his name taken off the list, the gentry exempted themselves from jury service and representatives of the middle class sat on the petty juries, well-to-do merchants at the Assizes, small shopkeepers at Quarter Sessions. "Every new tribunal," wrote Blackstone, "erected for the decision of facts, without the intervention of a jury . . . is a step towards establishing aristocracy, the most oppressive of absolute governments. . . . In every country on the Continent," as trial by jury "has been gradually disused, so the nobles have increased in power."<sup>3</sup> The professional judges, both in their private correspondence and in conversation, displayed a sovereign contempt for the democratic character of the juries: "petty juries, county assizes and untutored mechanics" was the scornful exclamation of Thurlow.<sup>4</sup> In the capital, where, as in all the large towns, there was nothing aristocratic about the body of magistrates, the Prime Minister Perceval complained in 1810 that the Under-Sheriff of Middlesex always empanelled

<sup>1</sup> Webb, *English Local Government*, vol. i. p. 447.

<sup>2</sup> *Ibid.*, vol. i. pp. 524-6.

<sup>3</sup> 3 *Comm.* 380.

<sup>4</sup> Campbell, *Lives of the Chancellors*, vol. v. p. 500.

## POLITICAL INSTITUTIONS

democratic juries to try political cases.<sup>1</sup> When that same year the Duke of Cumberland scandal occurred, it was a Charing Cross tailor called Francis Place, the great leader of the local democrats, who, in the capacity of foreman of the jury, made his way into St. James' Palace and there carried out the inquest.<sup>2</sup>

There exists also a third form of popular government, namely representative government. Far from being adapted, like government by public meeting and government by rotation, solely to small and rudimentary societies, representative government seemed to have been devised for the express purpose of enabling a vast population to govern, through the medium of elected representatives, a great civilized nation. In the assemblage of institutions which composed together the government of Great Britain, the King constituted the monarchic element, the Upper House the aristocratic element, and the Lower House, as representing the people, the popular element. The members of the House of Commons owed their seats to the working of a highly complex and heterogeneous franchise. This "heterogeneity" was the object of widely differing criticisms. Conservatives<sup>3</sup> saw in it a guarantee for the representation in Parliament of all classes and interests. The discontented, on the contrary, maintained that this heterogeneity was sheer muddle, and a muddle which had deprived the vast majority of the citizens of the means to make their will prevail, or even to make their voice heard, in the counsels of the nation. We must, therefore, undertake a detailed examination of the British representative system. Only after such examination can we decide how far it really deserved this appellation and to what extent the House of Commons in 1815 did really express the opinion of the country.

<sup>1</sup> *Diary of Lord Colchester*, April 15, 1810 (vol. ii. p. 361).

<sup>2</sup> See Graham Wallas, *Life of Francis Place*, pp. 54-5.

<sup>3</sup> Among these must be included many of the moderate reformers. See *Edinburgh Review*, December 1818, No. 61, Art. 8, *Universal Suffrage* (vol. xxxi. p. 180).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

### *Complexity of the Franchise. Scotland, Ireland, Wales.*

The British system of representative government was, in the first place, "heterogeneous," because the United Kingdom was composed of several distinct nations. Scarcely more than a century had passed since the union between Scotland and England. The parliamentary union between Ireland and England only dated from 1800. In the case of the Welsh principality, it is true that the English conquest had taken place in the very distant days of King Edward I, and that it had never possessed a separate constitution. It was, none the less, a real nation, with a distinctive culture and language of its own. It might even be said to possess also a distinctive religion of its own, since Calvinistic Methodism seemed destined to become the creed of the majority of the population. And the operation of the franchise differed in these three nations from its operation in England; nor was it even the same in Ireland, in Scotland and in Wales.

With a population of two million inhabitants Scotland returned forty-five representatives; but only by a legal fiction could these forty-five members be considered to represent two million Scotchmen. According to the principle obtaining throughout the United Kingdom they were divided into the representatives of the rural constituencies, the "counties," and the representatives of the urban constituencies, the "burghs." The thirty-six county representatives were returned to Parliament by a body of not more than 2,405 electors. In the counties the franchise was confined to freeholders whose land was liable to a tax of 45s. on lists drawn up at the close of the 13th or at the beginning of the 14th century. The electors might either be absolute proprietors, or tenants holding immediately of the Crown. And the number of county electors in Scotland would have been even more restricted had not the landlords devised means to create in their own interest a certain number of tenants who, while their nominal status was that of tenants-in-chief of the Crown, were in reality their dependents. The fifteen representatives of the Scottish

## POLITICAL INSTITUTIONS

burghs, the royal burghs, represented, on the other hand, a body of 1,220 electors. Of these, however, only thirty-three, the members of the corporation of Edinburgh directly elected their representative. The other election were indirect. The burghs were combined in groups of four or five, and each group sent a representative to Westminster.

An electorate so scanty was naturally at the mercy of the omnipotent influence of the local nobility. And what was the result of this? Undoubtedly clan rivalries kept up a semblance of political life. The Whig, Sir James Mackintosh, had been returned for Nairnshire in 1813, owing to the support of the Thane of Cawdor. His election had caused a sensation and was regarded as the first sign of a new epoch.<sup>1</sup> But the very astonishment aroused by this episode helps us to realize what was the normal character of a Scottish election at the beginning of the 19th century. The great families sold their support for places and titles to the Government in office of whatever political complexion it might be. It was the rule that "the management of Scotland," as it was termed, should be entrusted to a particular member of the Cabinet. Under Tory government this task fell to the Dundas family, to the first<sup>a</sup> and second Lord Melville. It was universally taken for granted that Scotland always supported the Government. Nevertheless, Scotland—or at least lowland Scotland—was one of the most active centres of British civilization. Whether for agriculture or manufactures the Lowlands could bear comparison with any English county. The Universities of Glasgow, Edinburgh, Aberdeen and St. Andrews, organized on the Continental system, despised the lifeless routine of Oxford and Cambridge.

<sup>1</sup> At the elections of 1812, the fact that Sir John Dalrymple dared to stand as Whig candidate for the constituency of Midlothian, which was considered as the appanage of the Dundas family, had already appeared remarkable. See Cockburn, *Memorials*, pp. 273-4. For the Scottish elections of 1812, see *Morning Chronicle*, October 12, 1812; Smith, *Register of Contested Elections*, pp. 126 sqq.; Porritt, *Unreformed Parliament*, vol. ii. p. 175.

<sup>a</sup> For his life, and the power of his family in Scotland, see an interesting notice in the *Annual Register*, 1801, pp. 133 sqq.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

At the Bar, in journalism, in letters, the Scottish had won the first places. How then could so progressive a nation endure, even provisionally, a system so oligarchic? It was because the system, as it had functioned during the last half-century, functioned in the national interest. The Scottish could do without the help of the Government when it was a question of establishing factories, or of making money by speech or writing; but they could not dispense with it when it was a question of obtaining posts in the public service. The "South Briton" endowed the "North Briton" with the attributes of audacity, obstinacy and freedom from prejudice, and therefore felt a deep-rooted distrust of him. How was this unpopularity to be overcome? The Scottish aristocracy undertook the task. The Ministry knew that it could count on forty Scottish votes, provided a fixed number of posts in the Army and the Civil Service were put at the disposal of Scotland. Never had the great Scottish families sold on other terms than these the seats which they controlled; never, or hardly ever, had they allowed anyone of English birth to represent one of their electoral fiefs.<sup>1</sup> The exclusiveness of their local patriotism explains, to a large extent, why Scotland endured a franchise so outrageous. The system was one of the means which she employed for the conquest of England.

Would the same thing happen in Ireland as in Scotland? The Opposition speakers expressed this fear when, in 1800, Pitt effected the parliamentary union of England and Ireland. Was it not, they asked, his intention to increase by this means his majority in Parliament and to buy the votes of the Irish representatives who would sit henceforward at Westminster, as he already bought those of the Scottish representatives?<sup>2</sup> Had not a member of the Cabinet been entrusted, almost officially, since 1800 with the management

<sup>1</sup> No such case ever occurred, according to Wakefield (*Ireland* vol. ii. p. 314). Nevertheless, Porritt (*Unreformed House of Commons*, vol. ii. p. 131) notices two exceptions: the historic instance of Fox, and that of George Damer, Lord Milton's eldest son, elected in 1775 for the Crail District of Scottish burghs. Some other instances were to occur in the 19th century before the Reform of 1832.

<sup>2</sup> H. of C., April 2, 1800, Grey's speech (*Parl. Hist.*, vol. xxxv. p. 71).

## POLITICAL INSTITUTIONS

of the Irish members?<sup>1</sup> Nevertheless, Ireland did not resemble Scotland. Her customs were different; her traditions were different; both the degree and the character of her civilization were different. An identical franchise would have operated differently in the two countries. And the franchise was not identical.

Thirty-six members of the House of Commons represented the thirty-four urban constituencies of Ireland, the "cities" or "boroughs." The Irish boroughs had not the same character as the Scottish. Like the English boroughs, with which we shall deal presently, they had constitutions differing in different places, either fixed by charter or statute, or determined by immemorial custom. In fact, only nine of these constituencies—ten, if we include the University of Dublin—were regarded in 1815 as "open" constituencies—that is, constituencies where the electorate was to some extent free and conscious of its power.<sup>2</sup> The remainder were divided into two unequal classes. There were eighteen boroughs,<sup>3</sup> where the franchise belonged to a close corporation, to twelve burgesses chosen by cooptation. In these cases the right to elect the member was the private property of the landlord, who had succeeded in making himself the "patron" of the corporation. In the six remaining boroughs<sup>4</sup> the franchise belonged either to the freeholders or to the members of the local corporation, the freemen, an indefinite number of whom could be created. Here also the influence of the great local landowner was supreme.

<sup>1</sup> See on this matter the advice given to Addington by Abbot in 1801 (*Diary of Lord Colchester*, vol. i. pp. 326 sqq.). Cf. *ibid.*, vol. i. p. 517, Wickham's letter to Abbot, May 21, 1804.

<sup>2</sup> Carrickfergus, Cork City, Drogheda, Dublin City, Londonderry, Dungarvan, Downpatrick, Newry, Waterford. This list is taken from Wakefield, *Ireland*, vol. ii. pp. 218 sqq., and Oldfield, *Representative History*, vol. vi. pp. 209 sqq., 297 sqq. Plowden, *Historical Review of . . . Ireland*, vol. ii. Appendix, pp. 227-8, makes out, for the period anterior to the Union, a list of twelve popular constituencies (including Dublin University). The borough of Swords (since abolished) and that of Lisburn (considered by Wakefield and Oldburn as under the patronage of the Marquis of Hertford) are added.

<sup>3</sup> Belfast, Armagh, Carlow, Ennis, Youghall, Bandon Bridge, Kinsale, Enniskillen, Tralee, Dundalk, Portarlington, Sligo, Clonmel, Cashel, Dungannon, Athlone, Wexford, New Ross.

<sup>4</sup> Lisburn, Mallow, Galway, Kilkenny, Limerick, Coleraine.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

The freeholders were at his beck and call; and if he were their patron, the corporation bestowed the freedom of the borough on all his nominees.

Despite all this the electorate was more numerous than that of the Scottish boroughs, and the control of the aristocracy was perhaps somewhat less absolute. This aristocracy, moreover, possessed political traditions more ancient than those of the Scottish aristocracy, and was bound less strictly to the Government in office. But in other respects electoral conditions were worse than in Scotland; for the Irish aristocracy which controlled the borough representation was not, like the Scottish, a national aristocracy. Set up in Ireland by the right of conquest, it possessed nothing in common with the majority of the population. It was, moreover, Protestant, whereas the poorer classes of the country were Catholic; and although, since 1792, Catholics had been eligible for membership of the borough corporations, since these were filled by co-optation, Catholics remained in practice excluded. A Protestant minority, therefore, exploited the country as if it had been a plantation, with no other aim in view save to draw from it as many advantages and as much revenue as possible.

In Ireland a borough seat was for sale and possessed a recognized market value which varied from time to time. When, in 1800, it was decided that certain boroughs which had been represented in the Dublin Parliament should have no separate representation at Westminster, it was actually found necessary to pass an Act of expropriation to indemnify those "whose property was bound up with the constituencies in question." Each seat suppressed had cost the Treasury £2,000. From a document contemporary with the election described we learn that in the general election of 1807 thirteen Irish boroughs sent an Englishman to represent them at Westminster. Of these thirteen some few had been chosen for political reasons by a patron acting in obedience to the orders of his party leaders. An instance of this was George Tierney elected for Bandon Bridge, a seat entirely in the hands of Lord Bandon, because he had been defeated in England and the Opposition could not dispense with his services. The rest—such men as Mr. Strahan, a London printer, elected for Carlow, and Mr. Wigram, a London

## POLITICAL INSTITUTIONS

merchant, elected for New Ross—were wealthy men who paid hard cash for the privilege of entering simultaneously Parliament and good society.<sup>1</sup> Such facts show that the Irish aristocracy employed their electoral patronage for ends very different from those of the Scottish nobility. In one way or another only English politics were concerned in the Irish borough, the interests of Ireland were ignored entirely.

The thirty-two Irish counties returned sixty-four members to the House of Commons, two members for each county. The county franchise belonged to all the forty-shilling freeholders. It was therefore identical with the franchise of the English counties. But forty-shilling freeholders were far more numerous in Ireland than in England. Curwen, who visited Ireland in 1813, was astonished to find the franchise in several Irish counties so wide as almost to approach universal suffrage.<sup>2</sup> The vast majority of these electors were bogus freeholders, the creation of the landlords, who regarded the exercise of the franchise as a sort of feudal due or *corvée* attached to the usufruct of the soil.<sup>3</sup> As a general rule they voted as their landlords directed. Nevertheless, the game played by the landlords when they multiplied the freeholders on their estates was by no means without its risks for themselves. During the opening years of the 19th century these risks were becoming visible.

Since 1800, and especially since 1807, public opinion had been faced with the problem whether or no Catholics should be allowed to sit in the House of Lords, and should be

<sup>1</sup> In these two boroughs the electorate consisted of twelve burgesses chosen by co-optation. At Carlow the patron was Lord Charleville, at New Ross Mr. Tottenham and Mr. Lee exercised the patronage in turn (Wakefield, *Ireland*, vol. ii. pp. 302, 310). Cf. John O'Connell, *Life and Speeches of Daniel O'Connell*, vol. i. p. 52; O'Connell's speech at Dublin, September 18, 1810: "What is the fact? Why, that out of the 100, such as they are, that sit for this country, more than one-fifth know nothing of us, or are unknown to us."

<sup>2</sup> Curwen, *Ireland*, vol. ii. pp. 20-1. For the detailed statistics see the present work, Book II, chap. i.

<sup>3</sup> For electoral purposes not only proprietors were deemed to be freeholders, but also tenants whose lease was at least for life. In determining the annual income derived from the land, the tenant's oath was always accepted in Ireland.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

capable of holding posts in the Army and Civil Service, and of election to the House of Commons. It was not likely that the priests would fail to make the Irish peasants realize that they had both the power and the duty to take an active part in the solution of the problem. If all the tenants in a county agreed to return a candidate favourable to Catholic emancipation, the landlords would be defenceless against this universal movement of popular opinion. And there was nothing to prevent a tenant who had quarrelled with his landlord subdividing his tenure among a number of tenants for life, and thus creating a body of electors dependent on himself and hostile to the great landowner. When in 1805 Lord Castlereagh, a former supporter of emancipation who had subsequently deserted the cause, was defeated for County Down, Dublin welcomed the news of his defeat with every manifestation of popular rejoicing. Lord Henry Petty, who witnessed these rejoicings, predicted the rapid decline of Government influence. "There is in most counties," he wrote to Creevy, "a rising spirit of independence, and the weight of the Catholic interest will be strongly felt."<sup>1</sup> Some months later, when Lord Loftus succeeded to the title of Marquis of Ely and entered the House of Lords, the electors of the county of Wexford returned a man of obscure origin in opposition to the family of the new marquis.<sup>2</sup> On the whole, the Catholic agitation made constant progress, notably in Tipperary and Roscommon.<sup>3</sup> It was only in the boroughs that the nature of the franchise rendered the position of the great landowners impregnable. In the counties they owed their supremacy not to the nature of the franchise, but to the disposition of the electors.<sup>4</sup> This disposition was changing, and it wanted

<sup>1</sup> *Creevy Papers*, vol. i. p. 43 (letter of October 24, 1805). Cf. *ibid.*, pp. 62-3. It must be admitted that Lord Castlereagh's defeat was by no means a typical case. County Down was Protestant. Lord Castlereagh failed because he was opposed by the powerful Marquis of Downshire. In 1812, with the Marquis's good-will, he was to secure his election (*Henry Grattan, Life and Times of Grattan*, vol. v. pp. 497-9).

<sup>2</sup> *Wakefield, Ireland*, vol. ii. p. 310.

<sup>3</sup> *Ibid.*, vol. ii. pp. 771-2.

<sup>4</sup> *Wakefield, Ireland*, vol. ii. p. 308. See *Life and Speeches of Daniel O'Connell*, vol. i. pp. 223 sqq. for an interesting description, given by O'Connell in a speech of November 5, 1812, of the

## POLITICAL INSTITUTIONS

but a few years for a universal revolt of freeholders to break out in all the rural constituencies of Ireland.

The principality of Wales does not require such lengthy treatment as Scotland or Ireland. It was a tiny country with primitive manners and a backward civilization, although the iron and coal mines were already beginning to enrich the southern half of the principality. With two exceptions, the boroughs possessed a franchise much more democratic than the franchise of Scottish or Irish boroughs. "The influence which prevails," wrote Oldfield, a severe critic of the established system, "is not the produce of corruption, but arises from the popularity and hospitality of men of considerable property. . . . An instance of bribery is very uncommon among them, nor are their morals debauched by frequent invitations to election treats, which are the parents of drunkenness, idleness and dissipation."<sup>1</sup>

It is evident, from what has been said, that we are not entitled to pronounce a wholesale condemnation upon the parliamentary franchise as it operated in Scotland, Ireland and Wales. It is indeed true that the forty-five representatives of Scotland, returned by an infinitesimal number of electors, had made it their regular practice to support the Government in office whatever its complexion. But of the hundred Irish constituencies, there were sixty-four where the rural electorate would be perfectly free, whenever they should desire to do so, to return Catholic and revolutionary members to Parliament. It would not even be true to say that the thirty-six remaining constituencies were, without exception, under the despotic power of the aristocracy; and the electors who returned the twenty-four representatives of Wales were universally regarded as honest and independent, and public opinion approved their choice. Nevertheless, our study of

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progress registered at the last elections by the cause of Catholic emancipation.

<sup>1</sup> Oldfield, *Representative History*, vol. vi. p. 1. With the exception of Walter Wilkins, the Member for Radnorshire, whose birth was obscure, and who had purchased an estate in Wales after making a fortune in India, all the Welsh members belonged to the gentry (W. R. Williams, *Parl. Hist. of Wales*). H. R. Smith registers six contested elections in 1812 (one of these a county election). This is certainly a considerable proportion (H. R. Smith, *Register of Contested Elections*, 120 sqq.).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the Scottish, Irish and Welsh franchise has but cleared the approaches to the problem. To discover the extent to which the House of Commons, taken as a whole, represented the will of the nation, we must analyse the laws and customs which regulated the election of the 489 representatives of England. Once more we are faced with a highly complex problem. The county franchise differed from the borough franchise, and the franchise of one borough differed from the franchise of another.

### *The Franchise in England. The Counties.*

The franchise was identical throughout the counties. It belonged to freeholders whose land brought in an annual revenue of forty shillings. But the elections by no means presented the same character in all counties, alike. There were counties in which, owing to the presence of dockyards, naval ports or bonded warehouses, the influence of the Government was peculiarly strong. Such a county was Hampshire,<sup>1</sup> and to a lesser degree Kent. There were others which presented the character of great urban constituencies, and where influence of all kinds, whether of the Government or of the local aristocracy, was in consequence enfeebled. Such, for instance, were Warwickshire and Yorkshire. The remaining counties could be arranged in a scale. At one extreme would be found the counties in which a handful of great landowners exerted an irresistible pressure upon the electors. This was the case in Westmorland, which was dominated by the all-powerful influence of the Lowther family. At the other extreme would be found the counties where the small proprietors and those with estates of moderate size were very numerous, and where in consequence the aristocracy found it more difficult to assert their authority. This was the case, for instance, in Shropshire, where the haughty independence of the freeholders was proverbial. Nevertheless, critics of the established system were inclined to denounce as universal the excessive influence of the great landowners. Only six or seven of the forty English counties

<sup>1</sup> Oldfield, *Representative History*, vol. iii. pp. 494-5. Cf. Cobbett's *Political Register*, November 22, 1806.

## POLITICAL INSTITUTIONS

are classed by Oldfield as independent.<sup>1</sup> Possibly the decline of the rural industries and the increase of large estates had even increased the electoral influence wielded by the aristocracy. On the whole, despite the variety of conditions, it is possible to arrive at an average type of English county in which, although the influence of the aristocracy was very strong, it was not unlimited, and where the large landed proprietors to maintain their authority must incur very great trouble and expense. The poll was taken at one place only in each county. Thither the freeholders of the county came to give their vote in public on the hustings where the sheriff sat among the local landowners. The candidates were obliged to defray the electors' travelling expenses from their homes to the hustings. They had, moreover, to pay for their board and lodging during the election. The law allowed the polling to continue for a fortnight, and the great question was which of the rival candidates would abandon the contest first. There existed a regular system of electioneering tactics, an art of holding in reserve troops of electors or sending them into action as the circumstances demanded, and of overwhelming the enemy by a sudden display of forces at the right moment. The following instances will enable us to form some idea of the expenses entailed by an electioneering campaign in the counties. Sir William Geary, returned unopposed for Kent in 1812, warned the freeholders that they were sending to Westminster a ruined man, since his contests in 1776 and in 1802 had cost him £22,000.<sup>2</sup> In 1807 the three candidates contesting the two Yorkshire seats spent almost £500,000.<sup>3</sup>

<sup>1</sup> Oldfield, *Representative History*, vol. iv. p. 54.

<sup>2</sup> *Morning Chronicle*, October 14, 1812; Oldfield, *Representative History*, vol. v. p. 268.

<sup>3</sup> Oldfield, *Representative History*, vol. v. p. 268. Cf. Miss Edgeworth, *Patronage*, chap. xvi: "Sir James Harcourt . . . a courtier who, after having ruined his fortune by standing for Government two contested county elections, had dangled year after year at Court, living upon the hope and promise of a pension or a place, till his creditors warning him that they could wait no longer, he had fallen in love with Lady Angelica Headingham." Also Wordsworth, *The Excursion*, Book VI:

"When he had crushed a plentiful estate  
By ruinous contest, to obtain a seat  
In Britain's senate."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Sometimes the smaller gentry and independent freeholders revolted against the yoke of the great local families. In the elections of 1812 Sir Gilbert Heathcote, of Normanton Park in Rutland, stood for that county. He appeared at Oakham, the county town, with a following of 500 freeholders, mounted on horseback, and snatched from the Marquis of Exeter a seat which since 1747 his family had regarded as their hereditary fief.<sup>1</sup> As a general rule, however, candidates shrank from contests so costly. Only nine county elections were contested in 1807, only two in 1812.<sup>2</sup> There were two seats for each county. In the majority of counties<sup>3</sup> the great families found that their most prudent policy was to agree to divide the seats—one of the two being allotted to the Whigs, the other to the Tories. In Yorkshire an agreement of this nature had been concluded between the two great local families, the Whig House of Wentworth and the Tory House of Harewood. In 1807 Wilberforce defied the coalition, stood as an independent candidate, and won his seat from the Harewoods.<sup>4</sup> In 1812, however, he retired from the field. When another attempted to take his place, the Harewoods announced publicly that they were prepared to spend £30,000 on the contest. The candidate beat a retreat and the traditional system triumphed.<sup>5</sup> Bitter were the complaints of the reformers. How could such a system fail to deprive the majority of counties to all intents and purposes of their representation?

Nevertheless, the injustice was not so glaring as would appear at first sight. On a vast number of questions, economic, administrative and religious, there existed a natural solidarity between the county electors and their representatives in Parliament, to whichever party the latter belonged. To take only one instance, both constituents and members in the English counties were convinced supporters of protection with a common interest to secure

<sup>1</sup> *Morning Chronicle*, October 20, 1812; Oldfield, *Representative History*, vol. iv. p. 371.

<sup>2</sup> Jephson, *The Platform*, vol. i. pp. 323, 346.

<sup>3</sup> In twenty-six of the forty (Oldfield, *Representative History*, vol. iv. p. 132).

<sup>4</sup> *Life of Wilberforce*, vol. iii. pp. 315 sqq.

<sup>5</sup> *Morning Chronicle*, October 10, 26, 27, 1812; *Leeds Mercury*, October 3, 14, 17, 24, 1812; *Newcastle Chronicle*, October 17, 1812.

## POLITICAL INSTITUTIONS

agriculture against foreign competition by the imposition of a heavy tariff. Even where the community of interest or sentiment was less perfect, the very nature of the franchise obliged the great landowners to respect the opinions of those who returned themselves, their relations or their clients to Parliament. If they wished to play a part in politics, they must prove accommodating in their dealings with the farmers, indeed with all their humbler neighbours. They must be prepared to spend lavishly on all occasions, to support local societies and to give public entertainments. All this was costly enough even in the intervals between elections, but popularity was not to be obtained at a cheaper rate. When in 1816 Brougham decided to defy the head of the Lowthers, the powerful Lord Lonsdale, in his own county of Westmorland, he was amused to see this great nobleman in preparation for the approaching contest, "bleeding at every pore—all the houses open—all the agents running up bills—all the manors shot over by anybody who pleases."<sup>1</sup> The great English landowner was not, like a great landowner in Ireland, a species of slave-owner, convinced that he had a right to the peasants' toil every day throughout the year and to his vote at an election. If he counted on the votes of his tenants, he treated them in return with a liberality which farmers—who were not downtrodden peasants but men of substance and standing—had come to consider their right.

To be sure, country gentlemen now took a larger share in city life than had formerly been the case. Admirers of the past regretted the days when they only visited London at rare intervals, when their departure was a local event and the bells of the parish church welcomed their return. But they still spent the greater part of the year on their estates; and even in town and in Parliament they remained, and were proud to remain, countrymen. The county members, the representatives of their class in the House of Commons, formed a distinct group with their peculiar traditions. By

<sup>1</sup> *Creevy Papers*, vol. i. p. 254. Cf. Cottu, *Administration de la Justice Criminelle en Angleterre*, p. 161: "In England extensive tracts of land belonging to the chief noblemen of the realm are let by them for a rent of half their real value, solely in order to secure votes."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

an unwritten law they alone had the right to wear spurs in the House.<sup>1</sup> They were symbols of the "old England," essentially aristocratic and rural, and voiced all the suspicion felt in the provinces for the Court and for officialdom.

"It is the subserviency of agriculture to the wants of mankind, connected perhaps with its sober and healthful pleasures, and the spirit of independence which it fosters, that has secured to it, in every age, the first rank among the useful arts, and obtained for it, in every country, the patronage of those most eminent for wisdom and virtue. The honours paid to it in China take their date from the remotest antiquity; and through the purer ages of the Roman Republic it was held in the highest estimation. In our own country the name of Russell, so proudly distinguished in the annals of freedom, stands pre-eminent among those who have patronized this noble art; and the great founder of American liberty, when the toils and dangers of warfare were ended, retired to the cultivation of that soil which his valour and his virtues had rendered free." This is the language of the *Edinburgh Review*,<sup>2</sup> the organ of advanced Liberalism; and although that journal waged an unremitting campaign in favour of a reform of the franchise, no attacks were made upon the county franchise. The day was indeed not far off when the Liberal Party would be the party of the towns in opposition to a country party representative of the old social order. But in 1815 the Opposition was still disposed to admit that the county members, who represented the agricultural interest, formed the healthiest element of the House of Commons, since their constituents were beyond the reach of ministerial corruption.<sup>3</sup> At the general election

<sup>1</sup> *Diary of Lord Colchester*, March 18, 1796 (vol. i. p. 45).

<sup>2</sup> *Edinburgh Review*, January 1814, No. 44, Art. 1; Sir H. Davy's *Elements of Agricultural Chemistry* (vol. xxii. p. 251).

<sup>3</sup> H. of C., May 4, 1809, Curwen's speech: "The peculiar advantage of having a landed proprietor in this House is that each individual brings with him the affections and the confidence of a portion of the people. . . . The infallible consequence, sir, of increasing the numbers of our country gentlemen within these walls, would be to make us more pacifically disposed. . . . It would turn our efforts and our attention to domestic improvement, to the melioration of our internal resources and the happiness of our country." (*Parl. Deb.*, vol. xiv. pp. 362-3). The elections of 1780, Fitzmaurice, *Life of Lord Shelburne*, vol. ii. pp. 74-5.

## POLITICAL INSTITUTIONS

of 1812, which had on the whole been favourable to the Government, the Opposition had gained four or five county seats.<sup>1</sup> Men such as Charles Western and Thomas Coke were at once county members and typical Whigs. The criticism of the advocates of reform was directed entirely against the borough franchise. But we must remember that as against eighty county members at Westminster there were, exclusive of the four representatives of the Universities of Oxford and Cambridge, 405 members representing the English cities and boroughs. Alone they formed four-sixths of the House of Commons. On our estimate of the borough representation of England must depend our estimate of the representative system of the United Kingdom.

### *The English Franchise. Open Boroughs.*

We will consider, first of all, the fifty-three boroughs where the franchise was extremely wide. In thirteen of these<sup>2</sup> it belonged to all the inhabitants not in receipt of

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See also Lord Shelburne's letter to Lord Mahon, April 2, 1780 (Porritt, *Unreformed House of Commons*, vol. i. p. 280): "It is acknowledged that the approaching election has a very great influence on the divisions now taking place in the House of Commons in favour of reform and redress of grievances. The county members have very generally voted on the public side, except a few who are likely to lose their seats for not doing so." The Elections of 1784, Moore, *Life of Sheridan*, p. 178: "At length, however, the spirit of the people, that last and only resource against the venality of Parliaments and the obstinacy of Kings, was roused from its long and dangerous sleep by the unparalleled exertions of the Opposition leaders. . . . The effect of this popular feeling soon showed itself in the upper regions. The country gentlemen, those birds of political omen, whose migrations are so portentous of a change of weather, began to flock in numbers to the brightening quarter of Opposition."

<sup>1</sup> *Morning Chronicle*, November 5th, 1812.

<sup>2</sup> Bedford, Cirencester, Hertford, Hindon, Honiton, Ilchester, Minehead, Northampton, Pontefract, Taunton, Tregony, Wendover; also the borough of Preston. Porritt (*Unreformed House of Commons*, vol. i. p. 30) enumerates fifty-nine scot-and-lot boroughs. He probably included under this heading the fifty-three boroughs classified as such by us together with a certain number of boroughs with a mixed franchise which we have classified elsewhere.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

poor relief and able to provide themselves with the necessities of life "to keep their pot boiling." Hence arose the term "potwallopers" or "potwallers" sometimes given to the electors of these boroughs where a system of practically universal suffrage prevailed. There was even one of these thirteen boroughs, namely Preston, where the franchise was given to all the inhabitants without exception. In thirty-six boroughs,<sup>1</sup> the franchise was granted only to those who paid the local imposts, scot and lot. To these thirteen potwallers' boroughs and thirty-six scot-and-lot boroughs must be added certain boroughs where the vote was possessed either by the forty-shilling freeholders, as in the counties, or by all the freeholders. But in nine of these the franchise was mixed and the freeholders were not in the majority. They must therefore be classed under other headings. There remain the double borough of Weymouth and Melcombe Regis where the freeholders, all of whom possessed the franchise, formed the majority of the electorate, and the three boroughs of New Shoreham, Cricklade and Aylesbury, where the area of the constituency had been enlarged by three Acts passed successively since the accession of George III, and where the suffrage had been granted, as in the counties, to all the forty-shilling freeholders.<sup>2</sup> Thus the parliamentary reformers who asked for an extension of the franchise found their ideal partially realized already in the electoral system of the country. If, with Major Cartwright,<sup>3</sup> they desired a system of universal suffrage such as obtained in America, they were demanding the extension to the whole of the United Kingdom of the system which obtained in the potwallers' boroughs. If with Horne Tooke<sup>4</sup> they were content to demand the grant of the

<sup>1</sup> Abingdon, Aldborough (Yorkshire), Amersham, Arundel, Bridgwater, Bridport, Callington, Camelford, Chichester, Dorchester, Eye, Fowey, Gatton, Great Marlow, Leicester, Leominster, Lewes, Newark, Penryn, Peterborough, Reading, St. Ives, St. Michael's, Seaford, Shaftesbury, Southwark, Stamford, Steyning, Stockbridge, Tamworth, Wallingford, Wareham, Warwick, Westminster, Windsor, Wootton Bassett.

<sup>2</sup> 10 Geo. III, cap. 55; 22 Geo. III, cap. 31; 44 Geo. III, cap. 60.

<sup>3</sup> *Life and Correspondence of Major Cartwright*, vol. i. pp. 82 sqq. Cf. our *Formation du Radicalisme Philosophique*, vol. i. pp. 227 sqq.

<sup>4</sup> A. Stephens, *Life of Tooke*, vol. i. pp. 501 sqq.; vol. ii. pp. 463, 479. *Formation du Radicalisme Philosophique*, vol. ii. pp.

## POLITICAL INSTITUTIONS

franchise to those who occupied a house assessed for taxation, they found their ideal in the scot-and-lot boroughs.

Indeed, if the system obtaining in the fifty-three boroughs of which we are now speaking had existed in all the English constituencies, they would have been democratic, or to use the traditional phrase "popular" constituencies. But this was far from being the case. The most important towns were not among the popular constituencies. When they had been granted the right to send representatives to Parliament, the intention of the Government had not been to bestow upon them the parliamentary representation to which they were entitled by their importance, but to extend its patronage, and to increase its influence at Westminster by falsifying at need the representation of the country.

Again, for more than a century the franchise had remained unaltered, although the distribution of the population throughout the entire kingdom had been profoundly modified. Great towns had grown up which had no parliamentary representation. Although many of the boroughs had grown in every direction, the boundaries of the constituency remained those of the old town. Taunton, for instance, would have counted 1,200 electors had all the quarters of the town taken part in elections. In reality the number of electors scarcely attained the third of this figure, for they were confined to one part of one of the town parishes.<sup>1</sup> Only half the district and population of Guildford actually possessed the scot-and-lot franchise.<sup>2</sup> At Southwark, the entire parish of Christ Church and half the parish of St. Saviour petitioned to be included in the parliamentary borough.<sup>3</sup> Elsewhere a decayed borough preserved its representation intact. The franchise was certainly democratic, but the electors were a mere handful. There were nine electors in the borough of Camelford, where the Duke of Bedford owned all the houses, and in 1812 had sold the borough and its represen-

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198 sqq. This was the proposal which *in the years immediately preceding 1815* was supported by Sir Francis Burdett, Bentham and Cartwright himself.

<sup>1</sup> Oldfield, *Representative History*, vol. iv. pp. 436, 438.

<sup>2</sup> *Ibid.*, vol. iv. pp. 593-4.

<sup>3</sup> *Ibid.*, vol. iv. pp. 587-8.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

tation for the sum of £32,000.<sup>1</sup> At Gatton there was only one elector. The six houses in the borough belonged to Sir Mark Wood, who occupied one himself, let the other five by the week, paid all the rates and taxes, and thus was the sole person in the borough entitled to exercise the scot-and-lot franchise.<sup>2</sup>

Moreover, the smaller the number of electors in a constituency the more easily was a majority changed by a slight alteration in the voting. The returning officer, who was a nominee of the local aristocracy, skilfully took advantage of the complexity of the franchise arbitrarily to allow or refuse a certain number of votes, and thus to turn the balance in the direction desired.<sup>3</sup> It is true that the candidate injured by such trickery could seek redress from Parliament. The electors whose vote had been illegally refused would be only too glad to come up and give evidence in his favour. But they would only do this if he paid the expenses of their journey to London and their board and lodging in the capital during the inquiry, which of course his opponent would take care to protract as long as possible. He had need be as wealthy as a "nabob" to support the expense of a "petition" of this kind before a parliamentary committee. Moreover, there was always the chance of an unfavourable result. Only too often the vanquished candidate found it more prudent to accept his defeat. Frequently the candidate

<sup>1</sup> Oldfield, vol. iii. p. 236.

<sup>2</sup> *Ibid.*, vol. iv. p. 606.

<sup>3</sup> For instance, the law deprived public officials of the franchise. An official came forward to vote. The crown protested. But the returning officer declared that the official in question had been appointed by the county, not by the central government, and accepted his vote (Oldfield, *Representative History*, vol. iii. p. 295). In another place the law granted the franchise to potwallers who were not paupers in receipt of relief. Did those come under this category who received relief from charitable funds at the disposal of the borough, independently of the Poor Law? The answer was "yes" or "no," as best suited the interest of the party to which the returning officer belonged (Oldfield, *Representative History*, vol. iv. pp. 435-6). Might prisoners vote? or even lunatics? It is related that once an elector, whose vote would have given a majority to one of the rival candidates, was arrested for debt at the entrance of the Town Hall and kept in gaol till the poll was concluded (Oldfield, *Representative History*, vol. iii. p. 367).

## POLITICAL INSTITUTIONS

who did not possess noble patronage retreated before the contest began. This was the reason why at every general election so many boroughs were uncontested.

From the foregoing considerations we see how difficult it is to estimate the resistance which the fifty-two boroughs possessing a democratic franchise were able to oppose to the influence of the aristocracy, to the pressure of the Government, to electoral corruption in all its forms. To arrive at even an approximate estimate we must classify them in distinct groups. We may leave out of account the two rotten boroughs of Camelford and Gatton, to which we may add the borough of Saint-Michael with its eighteen electors. The remaining boroughs fall naturally into three groups.

The first group comprises the constituencies—twenty-two in all—where the number of electors ranged from fifty to three hundred.<sup>1</sup> Poor men whose house and field were the property of a member of the ruling aristocracy, could not but feel themselves absolutely dependent upon him. Of such it may be affirmed without paradox that electoral corruption was their first instrument of emancipation. When the scot-and-lot elector shook off the landlord's yoke, put up his vote to auction, and sold it to a wealthy stranger, it meant that he had realized for the first time that at an election he could use his vote to make his landlord dependent upon himself, to oblige him "to dance to his tenant's tune." This happened in the smallest constituencies of the group under consideration, even in those which scarcely contained above fifty electors. At Stockbridge the fifty-seven electors refused *en masse* to pay their rent and to give their vote unless they received £60 a head. At Ilchester the sixty electors successfully revolted in 1802 and sold their votes at £30 a head. At Tregony in 1812 the Treasury carried

<sup>1</sup> Aldborough, Amersham, Arundel, Bridport, Callington, Dorchester, Eye, Fowey, Great Marlow, Hindon, Ilchester, Minehead, Penryn, St. Ives, Seaford, Steyning, Stockbridge, Wallingford, Wareham, Wendover, Wootton Bassett, with the borough of Weymouth and Melcombe Regis. In this last instance, indeed, the freeholders, to increase their electoral influence, had succeeded, by constant subdivision of their freeholds, in raising by degrees the number of electors from 200 to 2,000. But those 2,000 electors were merely *mén* of straw, fictitious electors, and the wholesale corruption of the borough brings it past all dispute within the present category.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

off the two seats from the noble family which regarded them as a secure possession. For it was not alone the *nouveaux riches*—"nabobs" returned from India, financiers, manufacturers—who profited by those conditions; the Government itself took advantage of it. George III, in the long struggle which he had waged against the Whig aristocracy, had organized on a large scale the traffic in parliamentary seats. At every general election he regularly set aside £12,000 out of the Civil List to secure the success of Government candidates.<sup>1</sup> The local solicitors were the natural agents of corruption. They organized the revolt of the borough against the great landlord, formed the electors into a syndicate, and went up to London to negotiate in the name of the syndicate the sale of the seats. The general character of elections in these small constituencies, where the number of electors did not reach 300, is now plain. There was certainly no absence of contest, but a perpetual contest, sometimes open, sometimes concealed, between the old feudal servitude and the new boroughmongering, encouraged by the King and the Cabinet.

We now come to the nineteen constituencies where the number of electors ranged between three and eight hundred.<sup>2</sup> The demarcation between this group and the former must of necessity be arbitrary. We have drawn it where Oldfield begins to recognize the existence of "independent" constituencies. Only three of these boroughs are considered by him as being respectively the property of two noble families. Newark with its 700 electors belonged to the Duke of Newcastle, Stamford with its 640 electors to the Marquis of Exeter, Peterborough with its 400 electors to Lord Fitzwilliam. At Lichfield, where the electorate numbered 600,

<sup>1</sup> When in 1806 the Government happened for once to be Whig, the Court found itself deprived of a portion of its resources. George III then hit upon a scheme by which seats were purchased at a low figure from families favourable to the Crown, the loss being made up by administrative favours, and then resold at a higher price to others, the profit thus made being spent on the purchase of other seats (Lord Holland, *Memoirs of the Whig Party*, vol. ii. pp. 93-4; Bulwer, *Life of Lord Palmerston*, vol. i. p. 52).

<sup>2</sup> Abingdon, Bedford, Bridgwater, Chichester, Hertford, Honiton, Leominster, Lewes, Newark, Peterborough, Pontefract, Reading, Shaftesbury, Stamford, Tamworth, Taunton, Warwick, Windsor.

## POLITICAL INSTITUTIONS.

two noble families had made an agreement to share the two seats. An influence of another sort was dominant at Tamworth, where Sir Robert Peel purchased the borough from two families of the neighbourhood,<sup>1</sup> and at Taunton, which was in the hands of two local bankers.<sup>2</sup> Two constituencies sold themselves to the Treasury.<sup>3</sup> Twelve, however, are considered by Oldfield as being independent of any outside influence.<sup>4</sup> A memorandum drawn up by Abbot, the future Speaker of the House of Commons, when in 1796 he thought of standing for Abingdon, enables us to understand without any need of further comment the character which an electoral contest might assume in a borough of this group. "The electors at Abingdon," he wrote, "are 240 scot-and-lot; about 70 of them take money. About half of the 240 go with the corporation. The Dissenters, headed by the Tom-kisses and Fletchers, are the next best interest. Child, the brewer, and his friends have also considerable weight. If all three sets can agree, they carry the place in defiance of all opposition. . . . The election (unopposed) would cost within £300, and annual subscriptions afterwards about £100 a year. Politics free."<sup>5</sup> Of the extent to which the influence of the Treasury and of the great landowners tended to diminish when the number of electors increased even slightly we can best judge from the example of Windsor, where at the very foot of the royal palace 300 electors returned in 1807 an independent candidate.<sup>6</sup>

We may now cross a considerable gulf to the third group. It consists of eight constituencies where not only was the franchise democratic but the number of electors exceeded a thousand. This was the case in the three boroughs of New Shoreham, Cricklade and Aylesbury. It was also the case in a certain number of large towns. Northampton had 1,300 electors, Leicester 2,000, Preston 2,100, Southwark, 3,000, Westminster 17,000. There the elections presented

<sup>1</sup> Oldfield, *Representative History*, vol. iv. p. 523.

<sup>2</sup> *Ibid.*, vol. iv. p. 437.

<sup>3</sup> Honiton, Bridgwater.

<sup>4</sup> Lewes, Shaftesbury, Windsor, Bedford, Chichester, Leominster, Cirencester, Hertford, Pontefract, Tewkesbury, Warwick, Abingdon.

<sup>5</sup> *Diary of Lord Colchester*, May 30, 1796 (vol. i. p. 55).

<sup>6</sup> Oldfield, *Representative History*, vol. iii. p. 46.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

practically the same character as the county elections, and were the field on which obstinate and ruinous contests were fought out between rival families. In these urban constituencies, however, a new class of society intervened in the contest—that of the manufacturers, who in the north of England had already begun to make enormous fortunes. They could rely on the assistance of the Treasury in a struggle against the great Opposition families. It was with the aid of Lord Liverpool and of the Church and King Club at Manchester that the Horrocks carried one of the Preston Seats against the Stanley family.<sup>1</sup> The names of Horrocks, of Peel, of Arkwright—in fact the greatest names of the cotton industry—are to be found in 1815 among the supporters of the Government. The interference in politics of these *nouveaux riches* increased the corruption of political life and many of their contemporaries took alarm. Certain manufacturing towns, according to Thomas Gisborne, were so convinced of the gravity of the evil that they regarded the grant of parliamentary representation as a calamity.<sup>2</sup> Wakefield deplored the facility with which business men purchased seats. According to him such men exerted an influence hostile alike to virtue and freedom, for they were the authors of a system of treating and bribery which was the disgrace of English elections.<sup>3</sup> But after all the evil, though it gave scandal from its very novelty, was not in reality so very grave.

In the first place, whatever the means they employed to get into Parliament, it is undeniable that the presence in the House of this new industrial aristocracy redressed the excessive preponderance of the great landowners. Nor could these new men from the factories, however greedy of titles and social importance, sacrifice their economic interests to their ambition. When the protectionist Corn Bill came under discussion and had obtained the approval of a large number of Whig landowners, Sir Robert Peel, a Tory member, energetically denounced the Measure and voted against a Ministry into which he was proud to have introduced his son. Moreover, as the number of electors multiplied, the

<sup>1</sup> *Ibid.*, vol. iv. pp. 97-8. Baines, *Lancashire*, vol. iv. p. 346.

<sup>2</sup> Gisborne, *Duties of Man*, vol. i. p. 214 n.

<sup>3</sup> Wakefield, *Ireland*, vol. ii. pp. 64-5.

## POLITICAL INSTITUTIONS

cost of corruption became absolutely prohibitive. Thomas Babington, Member for Leicester, and Henry Thornton, Member for Southwark, were model members. Southwark had rejected Tierney the moment he accepted a lucrative sinecure. The gigantic constituency of Westminster had effected, during the last ten years, nothing short of a revolution in the history of English parliamentary representation. After a century of violent and often ruinous contests—in 1788 his election had cost Lord Townshend £50,000—the two parties had adopted the system of sharing the seats. Though this system was economical, since it suppressed electoral contests, it had the disadvantage of involving the political annihilation of the constituency. In 1807 the electors revolted against it and returned Sir Francis Burdett, the popular candidate who was independent of both the traditional parties, without the expenditure of a single penny on his part. In 1812 other democratic agitators, Hunt and Cartwright, came forward with the same programme as Burdett. Though unlike him they failed to secure their return, nevertheless the English electorate was attaining an ever clearer consciousness of their independence. Many symptoms justified the hope of a sensible improvement in the conduct of elections even under the existing system. The price of boroughs had been lowered.<sup>1</sup> Many candidates rejected propositions for the wholesale purchase of a majority.<sup>2</sup> The Opposition papers remarked with pleasure that less cynicism was now displayed in the preparations for an election, and more regard shown for decorum and respectability.

For all their defects the constituencies which we have just described were the remnants of a democratic system of representation. The majority of English boroughs, however, still remain to be examined. In all these we shall find that the enjoyment of the franchise was subjected either by law or custom to more rigorous conditions.

<sup>1</sup> To £2,000 and under. *Morning Chronicle*, October 2, 1812, Alderman Wood's speech (City of London).

<sup>2</sup> *Newcastle Chronicle*, October 19, 1812; *Morning Chronicle*, October 23, 1812.

*The English Franchise. Burgage Boroughs.*

There were thirty-seven boroughs described as burgage or burgage tenure boroughs.<sup>1</sup> The burgage was a feudal tenure, which imposed on the tenant the performance of certain fixed services to the Lord of the Manor. In these burgage boroughs the number of voters was determined by the number of holdings, whether cultivated or uncultivated, occupied or unoccupied, whose tenure was a burgage tenure. If one single owner managed to gather into his hands all the burgage holdings, there was but one elector for the borough, which then became in the strictest sense of the term the property of an individual, a proprietary borough. No abuse of the English franchise was to be the object of such violent denunciation by the Radical reformers of 1832 as the proprietary borough. None had been treated so leniently in Parliament during the last years of the 18th century. The more the great families who dominated Parliament declaimed against the corruption of the constituencies, since this was a weapon too frequently employed at their expense by the Treasury or by the *nouveaux riches*, the more were they inclined to regard the burgage boroughs as the solid support alike of their own power and of the liberties of the nation. Nor must we forget that the number of these burgage boroughs, which it is tempting to regard as typical examples of the ancient system of representation, was extremely small. Moreover, before passing upon them an indiscriminate condemnation, we must first decide to what

<sup>1</sup> Oldfield reckons thirty-six of these (*Representative History*, vol. iii. pp. 298-338). Porritt, however, enumerates thirty-nine (*Unreformed House of Commons*, vol. i. p. 30). I make out thirty-seven: Appleby, Ashburnham, Berealston, Bletchingley, Boroughbridge, Bramber, Chippenham, Clitheroe, Cockermouth, Corfe Castle, Downton, East Grinstead, Great Bedwin, Haslemere, Heytesbury, Horsham, Knaresborough, Lichfield, Ludgershall, Malton, Midhurst, Milborn Port, Newport, Newton (Isle of Wight), Newton (Lancs), Northallerton, Old Sarum, Petersfield, Richmond (Yorks), Ripon, Reigate, Saltash, Tavistock, Thirsk, Westley, Westbury, Whitechurch. Oldfield probably omitted Lichfield when the franchise was of a mixed character, but which should, we believe, be included in this list.

## POLITICAL INSTITUTIONS

extent they really were the absolute property of an individual or family, and even when this was the case, what use was made of the property. Where the number of burgage holdings was very small, where they all belonged to a single owner, and where the law expressly gave the franchise not to the tenant but to the landlord of the burgage holding, the borough was in the most absolute sense a close borough, and it was impossible to open it. Such was the proverbial borough of Old Sarum. The Earl of Caledon had bought from Lord Camelford the uninhabited estate on which had once stood a flourishing town. As owner of the seven burgage holdings he nominated two members at a general election.<sup>1</sup> Where, however, the number of burgage holdings was larger, where they were divided among several owners, and where the franchise belonged not to the landlord but to the occupier, the borough at once ceased to be the exclusive property of an individual. At Northallerton, in Yorkshire, the landlord of a large number of houses to which burgage tenures were attached could only preserve his right of nomination by granting the tenants a rebate of £100 on every long lease.<sup>2</sup> At Haslemere, the first Lord Lonsdale, the owner of forty freeholds carrying with them the franchise, actually brought forty of his Northumberland miners to Surrey, lodged them and paid them at the rate of 10s. 6d. a week without exacting any service in return save a vote for his candidates. When in 1812 the second Lord Lonsdale, finding this procedure too costly, dismissed his professional electors, the seat was at once threatened.<sup>3</sup> At Malton the proprietor, or rather the would-be proprietor, of the borough at one election actually lost one of the seats.<sup>4</sup> The landlords had invented a number of fraudulent or semi-fraudulent devices to defend what they deemed their property. One of these was the creation of electors for the occasion, whose lease was purely fictitious, valid only for the period of the election. Another was the splitting of the freeholds to multiply the number of votes at the disposal of the proprietor.<sup>5</sup> This gave rise to grievances and lawsuits, which might cost

<sup>1</sup> Oldfield, *Representative History*, vol. v. p. 217.

<sup>2</sup> *Ibid.*, vol. v. p. 341.

<sup>3</sup> *Ibid.*, vol. v. pp. 599 sqq.

<sup>4</sup> *Ibid.*, vol. v. p. 346.

<sup>5</sup> *Ibid.*, vol. iii. pp. 323, 570; vol. iv. p. 599; vol. v. p. 214.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the parties concerned as much as £40,000 or even £60,000. Thus even in the burgage boroughs the political privileges of the aristocracy were threatened.

Let us suppose, however, that in one of these boroughs the proprietor exercised in perfect security the right conferred upon him by custom. In what way, in what spirit, would he employ his parliamentary fief? Possibly as a source of pecuniary profit. For the last forty years the honour of membership of the House of Commons had been more coveted than in the past, and it was now more common for the proprietors of boroughs to sell them to the highest bidder. This practice, however reprehensible, presented certain advantages. It might guarantee the independence of the new member against the interference of the proprietor. It was for this reason that Sir Francis Burdett, the democrat, bought in 1796 one of the seats for Boroughbridge from the Duke of Newcastle. But it is most important to bear in mind that in England this boroughmongering was quite the exception. Wakefield, an impartial critic, witnesses to a great difference in this respect between England and Ireland. The proprietors of boroughs were, indeed, he tells us, "only too often disposed to this traffic, but such borough-mongers were held in very slight esteem and occupied a very low position in society."<sup>1</sup> In the majority of cases the proprietors of boroughs used their property for the profit of their family. Their political morality was the morality not of a merchant but of the chief of a clan. Each member of one of the great families who governed the English provinces regarded his intellect, his energy and the influence at his disposal as due in the first instance to his family, and after that to the party to which his family belonged. Though the system was one of pure oligarchy, it contained, nevertheless, representative and even democratic elements. At the opening of the 19th century a theory was evolved by the apologists of the existing system, according to which a Member of Parliament did not represent his own constituency, but joined with his fellow members to constitute the indivisible representation of the kingdom as a whole.<sup>2</sup>

<sup>1</sup> Wakefield, *Ireland*, vol. ii. p. 315.

<sup>2</sup> *Edinburgh Review*, November 1820, No. 68, Art. 12, *Parliamentary Reform* (vol. xxxiv. pp. 475-7).

## POLITICAL INSTITUTIONS

This was the theory of virtual representation which maintained that virtually, if not actually, the members who sat for Gatton or Old Sarum represented not only the phantom electors of these two boroughs, but also the scot-and-lot electors of Southwark and Westminster and the freeholders of the counties. Nor was this paradoxical plea on behalf of an unequal franchise without an element of truth. The representative of a close borough belonged from the day of his election to an aristocratic party which comprised not only the representatives of other close boroughs, but also members elected either by open boroughs or by counties. One with his party in all things, and under the control of a party leader, he yielded indirectly or "virtually" to the pressure exerted upon these by a wider electorate. Suppose him, for instance, a Tory, an advocate of war at any price, an opponent of Catholic emancipation. When he gave his vote on this side, he knew that he was not merely obeying the commands of a patron, but that he also voiced the opinion of a very large section both of the borough and of the county electorate. Suppose him, on the contrary, a nominee of the Duke of Bedford or of the Duke of Norfolk. He would then vote with the Opposition, and would demand a peace policy and even the reform of the representative system to which he owed his seat. In 1832 two proprietors of boroughs, Lord Fitzwilliam and Lord Radnor, were to form, with their clientele in the House of Commons, the backbone of the majority in favour of reform.

Not only their relations, but also their dependants, were sent to Parliament by the proprietors of boroughs. After the 1812 elections the great Whig families enabled the intellectuals of the party, defeated in the open boroughs, to re-enter Parliament by offering them the seats at their disposal. Pocket boroughs had at all times provided for clever youths who had left the Universities and had begun to show their capacity at the Bar a means of entering Parliament without the risk or expense of an electoral campaign. For such men their first years in Parliament were often very difficult.<sup>1</sup> Gratitude and self-interest alike kept them under the strict control of their political patrons. If they dared to

<sup>1</sup> On their position, whose difficulties were often permanent, see Gisborne, *Duties of Man*, vol. i. pp. 217-18.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

speak or vote without orders from their patron they might lose their seats; but their independence increased with the increase of their personal importance. In 1795 and in 1797 Abbot, the nominee of the Duke of Leeds, twice voted in support of important Measures of which his patron disapproved. After a correspondence the Duke withdrew his censure of Abbot's conduct.<sup>1</sup> In 1815 Francis Horner, although he owed his seat to Lord Grenville, dissociated himself from Lord Grenville's more conservative and bellicose party and voted with Lord Grey and Whitbread. He felt obliged to excuse himself and to offer to resign his seat. The offer, however, was not accepted and the hope was expressed that Horner would still adorn the group of Lord Grenville's friends with the prestige of his name.<sup>2</sup> What is true of Abbot and of Horner is naturally even more true of a great man like Wilberforce. In 1811 Lord Calthorpe offered Wilberforce, who was tired of representing Yorkshire and in search of a "quiet borough," his burgage borough of Bramber.<sup>3</sup> Obviously he would not have dreamed of giving orders to Wilberforce; but Wilberforce was related to him, they belonged to the same party, and it would be alike to his honour and to his credit to have Wilberforce as the representative of his borough.

### *The English Franchise. Corporation and Freemen Boroughs.*

In the burgage boroughs the franchise was attached to the soil. In the boroughs, whose constitution remains to be studied, it was the privilege of a corporate body. Among these were boroughs in which the franchise was the sole property of the members of the "corporation," the membership of which was recruited by co-optation. Elsewhere it was wider, and belonged to all the freemen of the borough—that is to say, to all the members of the guilds or "companies." We find, therefore, two distinct bodies of electors. Certain practices, however, tended to blur the distinction

<sup>1</sup> *Diary of Lord Colchester*, vol. i. pp. 17, 124 sqq.

<sup>2</sup> *Court of England during the Regency*, vol. ii. pp. 124 sqq.

<sup>3</sup> *Life of Wilberforce*, vol. iii. pp. 534 sqq.; *Diary of Lord Colchester*, vol. ii. p. 345.

## POLITICAL INSTITUTIONS

between them. Wherever the freemen possessed the franchise, it would appear to have belonged equally, whether by express statute, or by immemorial custom, to the corporation, and where the practice was not expressly prohibited by law, the corporation possessed the right to create an indefinite number of honorary freemen, and was able by this means to acquire a preponderating influence even in boroughs where all the freemen voted. The majority of English boroughs were either corporation or freemen boroughs. There were thirty-six of the former, seventy-seven of the latter. Taken as a whole these boroughs illustrate perfectly the complex character of the unreformed franchise in England; for in them we discover a host of divergent influences at work—the influence of the great landowner, the influence of the wealthy merchant or manufacturer, the influence of the Treasury, and finally the influence of independent public opinion.

The thirty-six corporation boroughs<sup>1</sup> were obviously those in which the independence of the electorate was at the minimum. These tiny constituencies, where the electorate often did not exceed ten and very rarely rose above a hundred, were inevitably exposed to illicit pressure, and the poorer the electors, the more incapable they would be of resisting the pressure. Among the thousand inhabitants of the small borough of Malmesbury were bankers, solicitors and merchants, who would have conferred the desirable respectability on the corporation, had they been members of it. On the contrary, of the thirteen members of the corporation there had been quite recently ten incapable of signing an official document.<sup>2</sup> For these illiterates, the franchise was not

<sup>1</sup> Andover, Banbury, Bath, Bewdley, Bodmin, Brackley, Buckingham, Bury St. Edmunds, Calne, Christchurch, Dartmouth, Devizes, Droitwich, Harwich, Helston, Launceston, Liskeard, Lostwithiel, Lyme Regis, Lymington, Malmesbury, Marlborough, Newport (Isle of Wight), Plymouth, Portsmouth, Salisbury, Scarborough, Thetford, Tiverton, Truro, West Looe, East Looe, Wigan, Wilton, Winchester, Yarmouth. Porritt (*Unreformed House of Commons*, vol. i. p. 30) places forty-three boroughs in this class. The discrepancy is doubtless to be explained by the existence of many boroughs with a mixed franchise. Porritt does not, however, give the names of his forty-three corporation boroughs, which makes it difficult to control his estimate.

<sup>2</sup> Oldfield, *Representative History*, vol. v. p. 179.

a weapon for the defence of reputable interests, but simply a means of gaining money at intervals without having to do any work for it. The electorate of these corporation boroughs, like that of the smaller scot-and-lot boroughs, was subject to the influence of the landed aristocracy, for the electors were, as a general rule, tenants of the great landowners of the district. They were not, however, prepared to give their vote for nothing. A solicitor, as at Andover, Bewdley and Devizes,<sup>1</sup> or a chemist as at Malmesbury,<sup>2</sup> acted as their agent and in their name offered the two borough seats at a fixed price to anyone willing to conclude the bargain. The Government did not fail to take advantage of this traffic, and it is perhaps in this group that we find the greatest number of those boroughs which were termed Treasury or Admiralty boroughs, because the Government had either bought the votes of the corporation or had filled the corporation itself with its paid clients. It was in vain that the law forbade public officials to vote. Their fathers, brothers and sons could always exercise the franchise, and they might themselves be members of the corporation and would then take care that vacancies among the members were filled by men agreeable to the Government.

Where, on the other hand, the corporation was composed not of an ignorant and irresponsible rabble but of the leading men of the neighbourhood, this was often in itself sufficient to emancipate the corporation borough from servitude of any kind, whether to the aristocracy or to the Government. The borough of Calne in Wiltshire did not possess above seventeen electors, all members of the corporation, and for forty years the patronage of Lord Lansdowne had been accepted without demur. But in 1807 Lord Lansdowne had tried in vain to compel the corporation to get rid of Mr. Jekyll, one of the retiring members. The corporation had stood firm and Mr. Jekyll had been re-elected free of cost in opposition to Lord Lansdowne's wishes.<sup>3</sup> The borough of Portsmouth contained, with the suburb of Portsea, 33,000 inhabitants, of whom 3,000 were employed in the Admiralty

<sup>1</sup> Oldfield, vol. iii. p. 545; vol. v. p. 256; vol. v. p. 157.

<sup>2</sup> *Ibid.*, vol. v. p. 180.

<sup>3</sup> *Ibid.*, *Representative History*, vol. v. p. 152.

## POLITICAL INSTITUTIONS

dockyards. Only the members of the corporation—the mayor, the aldermen and the burgesses—110 in all, were electors. During the greater part of the 18th century the borough had been an Admiralty borough. In 1780, however, the corporation had rebelled. For a long time the numerical strength of the parties remained almost equal. Finally the Government was defeated in the first naval port of the realm.<sup>1</sup>

The seventy-seven boroughs<sup>2</sup> where the franchise belonged to the freemen presented a greater diversity of character and it would seem at first sight, from the extreme variability in the number of the electorate—in some places insignificant, in others considerable—that they must have resembled very closely the scot-and-lot boroughs. Their constitution was not, however, quite the same, and the part played by corruption was probably somewhat greater.

In these boroughs the enjoyment of the franchise was determined not by a property qualification—either high or low—but by the accident of an ancient municipal constitution. It might happen, as at Liverpool<sup>3</sup> and in the City of London,<sup>4</sup> that the franchise belonged to the poor, to the exclusion of the rich. Such a plebeian electorate often lacked the necessary independence. The Opposition complained, for instance, in 1812 that Brougham's defeat at Liverpool had been caused by the labourers voting in gangs in obedience to the orders of

<sup>1</sup> Oldfield, vol. iii. pp. 504 sqq.

<sup>2</sup> Aldborough, Barnstaple, Berwick-on-Tweed, Beverley, Bishop's Castle, Boston, Bridgenorth, Cambridge, Canterbury, Carlisle, Castle Rising, Chester, Colchester, Wycombe, Coventry, Derby, Dover, Dunwich, Durham, East Retford, Evesham, Gloucester, Grampound, Grantham, Great Grimsby, Hastings, Hereford, Heydon, Higham Ferrers, Hull, Huntingdon, Hythe, Ipswich, Lancaster, Lincoln, Liverpool, City of London, Ludlow, King's Lynn, Maidstone, Maldon, Monmouth, Morpeth, Newcastle-under-Lyne, Newcastle-upon-Tyne, New Romney, Orford, Oxford, Plympton Earle, Poole, Queenborough, Rochester, Rye, St. Albans, St. Germans, St. Mawes, Sandwich, Shrewsbury, Southampton, Stafford, Sudbury, Totnes, Wells, Wenlock, Woodstock, Worcester, Yarmouth, York. To these sixty-eight constituencies we must add the nine following constituencies where the franchise belonged conjointly to the freemen and to the freeholders or to the forty-shilling freeholders: Bossiney, Bristol, Exeter, Guildford, Norwich, Nottingham, Oakhampton, Tewkesbury, Winchelsea. Porritt gives sixty-two freemen boroughs (vol. i. p. 30).

<sup>3</sup> Oldfield, *Representative History*, vol. iv. p. 195.

<sup>4</sup> *Ibid.*, vol. iv. p. 195; *Morning Chronicle*, October 29, 1812.

the important electors of the locality. Again, the electors were not necessarily denizens of the place. Hereditary freemen did not lose their franchise by living away from the borough. The candidate in need of their votes had therefore to seek them out and to convey them to the poll at his expense. He had to pay them 6s. a day for their travelling expenses, 7s. 6d. for their maintenance, 10s. 6d. to cover any losses incurred. It would therefore cost £10 to bring a voter from London to Colchester, £15 to bring him from London to Bristol, £20 from London to Exeter, £30 from London to Newcastle-on-Tyne.<sup>1</sup> A contested election at Barnstaple, in Devonshire, cost from £10,000 to £13,000,<sup>2</sup> since the voters were scattered throughout the entire realm. And finally the power possessed by the corporation to create honorary freemen also falsified the conditions of an election. A candidate who felt doubtful of his popularity among the freemen, and did not consider himself in a position to spend the sums necessary to secure it, would betake himself to the corporation and obtain from that body the creation of a sufficient number of honorary freemen to swamp the hostile majority. At Carlisle there were 700 electors, and the popular candidates were the nominees of the Duke of Norfolk. But Lord Lonsdale was master of the corporation. At his instance the corporation conferred the honorary freedom upon 14,000 of his coal miners and on three occasions his candidates thus secured election.<sup>3</sup>

We have found the same abuses universally prevalent, though perhaps graver in these boroughs than elsewhere. Everywhere, on the other hand, we remark the same variety, perhaps more accentuated in freemen boroughs than in others. If there were nine of these with less than twenty electors,<sup>4</sup> there were twenty in which the electorate ranged

<sup>1</sup> *State of Representation*, 1793, p. 12.

<sup>2</sup> Oldfield, *Representative History*, vol. iii. p. 300.

<sup>3</sup> *Ibid.*, vol. iii. pp. 264, 265. Ordinarily the two seats had been shared between the two parties (*ibid.*, p. 255). If in 1812 both seats were secured by Lord Lonsdale's party, it must be added that the defeat of Curwen, the popular candidate, was ascribed by Curwen himself to causes into which fraud does not enter (Curwen, *Observations . . . on Ireland*, vol. i. pp. 6, 7, 15). Cf. R. S. Ferguson, *The Cumberland and Westmorland M.P.s*, p. 222.

<sup>4</sup> Bossiney, Dunwich, Hastings, New Romney, Orford, Rye, St. Germans, St. Mawes, Winchelsea.

## POLITICAL INSTITUTIONS

from 500 to 1,000,<sup>1</sup> and twenty-two in which it exceeded 1,000.<sup>2</sup> Bristol counted 6,000 electors, the City of London 17,000. The nine boroughs where the number of electors was infinitesimal are instances of degeneration from the normal type. In these, to the advantage of the local patrons, the franchise was in practice confined to the members of the corporation; but immediately the number of electors ceased to be absolutely insignificant the influence of the aristocracy was weakened. At Chipping Wycombe there were only fifty electors. Nevertheless, twenty years before our period, Sir John Dashwood had won from Lord Lansdowne the seat which he had been accustomed to regard as his property.<sup>3</sup> When the number of electors exceeded 500, and a fortiori 1,000, the electorate began to assert its independence.

If even in the large towns the ancient families still retained much of their influence, it was because they were prepared to make the necessary concessions to popular demands, or to discover points on which their political feelings were identical with those of the electors. Thus the Duke of Norfolk remained the patron of the borough of Gloucester, where 3,000 freemen exercised the franchise, because he had succeeded in winning the confidence of the people by his constant largesses and by the firmness of his political conduct. The scandals which took place at a Bristol election were doubtless disgraceful, but these scandals cannot be ascribed to corruption by the Government or by wealthy individuals.

<sup>1</sup> Berwick-on-Tweed, Bridgenorth, Carlisle, Derby, Evesham, Grantham, Ludlow, Maidstone, Maldon, Monmouth, Newcastle-under-Lyme, Rochester, Sandwich, Shrewsbury, Southampton, Stafford, Sudbury, St. Albans, Tewkesbury, Yarmouth.

<sup>2</sup> Beverley, Bristol, Canterbury, Chester, Colchester, Coventry, Dover, Durham, Exeter, Gloucester, Hereford, Hull, Lancaster, Lincoln, Liverpool, City of London, Newcastle-on-Tyne, Norwich, Nottingham, Oxford, Worcester, York.

<sup>3</sup> Oldfield, *Representative History*, vol. iii. p. 85. Cf. Lord Lansdowne's complaints as given in Fitzmaurice, *Life of Lord Shelburne*, vol. ii. pp. 362-3: "And after all, when the crisis comes, you are likely to be outbid by a nabob or adventurer, and you must expect all that you have done to go for nothing, and the most you can look for is a preference. What can you say to a blacksmith, who has seven children, or to a common labourer who is offered £700 for his vote, or to two misers who are offered £2,000, which are all instances distinctly upon record at Wycombe since Mr. Dashwood's election."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Bristol was governed by two clubs—two caucuses we should call them to-day—one Whig, the other Tory. Sometimes these agreed to divide the seats amicably,<sup>1</sup> sometimes they contested them with a bitter animosity, which knew no scruples in the choice of weapons. In other words, Bristol was already, under the unreformed franchise, a demagogue-ridden city and the growth of democracy by no means tended to cure the evils from which it was suffering. In London Waithman, a draper, the shopkeepers' candidate, when defeated in the 1812 elections, complained, and his complaint was echoed by the Opposition journals, that the establishment of the Excise offices and of the Bank of England in the heart of the City, the introduction of an armed force for their protection, and the growing importance of the offices of the offices of the Customs and of the East India Company, had increased the influence of the Government.<sup>2</sup> But obviously no extension of the suffrage could abolish an influence which took this form. Like Nottingham, where the artizans ruled the constituency,<sup>3</sup> Norwich, Newcastle and Coventry, both Bristol and the City of London were "independent" and "popular" constituencies.

### *Defects and Merits of the Unreformed Franchise.*

The abuses of the English system of representation were undoubtedly many and grave; but it is surely impossible to pass a general judgment upon a system so extremely complicated. Are we in a position to estimate the exact degree in which the nature of the parliamentary franchise stultified the operation of the representative principle and prevented public opinion from finding expression in Parliament? In 1817 Oldfield attempted to compile statistics on this point.<sup>4</sup> According to his estimate, of the 405 representatives of the English boroughs fourteen were returned to Westminster not by the free choice of the electorate of their

<sup>1</sup> Oldfield, *Representative History*, vol. iv. pp. 416 sqq.

<sup>2</sup> *Morning Chronicle*, October 15, 1812.

<sup>3</sup> Brentano, *Guilds and Trade Unions*, p. 117.

<sup>4</sup> Oldfield, *Representative History*, vol. vi. pp. 280 sqq., Appendix, containing correct tables of parliamentary patronage in England, Wales, Scotland, and Ireland.

## POLITICAL INSTITUTIONS

respective constituencies, but because their seats were in the patronage of the Government.<sup>1</sup> This figure is in our opinion too high, but even were it correct, it is obvious that the interference of the executive in the English representative system was after all very trifling. It was by no means the same with the aristocratic influences. According to Oldfield 197 representatives, or rather so-called representatives, of the English boroughs were the arbitrary choice of a certain number of local "patrons," themselves members of the House of Lords or the House of Commons, and belonging as a general rule to the governing aristocracy. In the case of another 119 boroughs, although there was no nomination by a patron in the strict sense of the term, the influence of a patron was the decisive factor in determining elections.<sup>2</sup>

<sup>1</sup> According to Oldfield the patronage of the Government was exercised over sixteen seats, including the two Hampshire seats. These two subtracted, we are left with fourteen seats for the boroughs. But Oldfield means that in the 1812 elections fourteen candidates in ten boroughs had been returned owing to Government pressure. But in only one borough, Queenborough, did the nomination of the two members belong permanently and uncontestedly to the Government. Elsewhere it was only a matter of influence, an influence constantly threatened by opposing influences. The two seats for Plymouth had been lost since 1792. One of the two Windsor seats had been lost since 1804. It was only by a fortunate chance that the Government had been able to recover the two seats for Sandwich.

<sup>2</sup> From Oldfield's table of the parliamentary patronage in England and Wales we have removed the Welsh and county seats. It is instructive to compare this table with the table drawn up in 1793 on the same plan by the "Society of the People's Friends" (see *State of the Representation*, pp. 30 sqq.). Oldfield's figures are higher than those of the Society of the Friends of the People. According to the latter list there were 168 boroughs in which there was nomination by a patron, 108 in which the influence of a patron was predominant. We must not, however, conclude that the system of parliamentary patronage had been aggravated during the last twenty-five years. It is always difficult to arrive at a clear and objective definition of "patronage" or "influence." Oldfield, for instance, ascribes to Lord Darlington the nomination of the two members for Tregony. In 1812, however, his candidates had been defeated by the Government candidates (*Representative History*, vol. iii. pp. 197-8). The borough is a case not of nomination but of influence. Oldfield also ascribes to the Marquis of Lansdowne the nomination of the two Members for Calne. But elsewhere he tells us that in 1807 the electors had returned in opposition to the Marquis an independent candidate (*Representative History*, vol.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

But we have still to ask what is the real worth of this division of the English boroughs into three watertight compartments? Surely the division rests upon a false principle. From the nomination borough to that in which there was nothing more than a dominant influence, and from that again to a popular borough, there was an imperceptible transition. Even the boroughs classified by Oldfield as nomination boroughs were by no means always a property of which the assured possession passed down in a family from father to son without need of effort for its preservation. In very many cases constant attention and almost infinite outlay were essential, if the electoral fief were not to be lost. A great rival family, a "nabob" returned from India with an enormous fortune, a local banker, a wealthy manufacturer, might at any time, if the proprietor were not willing to sell his electoral interest for ready money, declare war upon him, buy the voters and outbid the patron, until the day came when the new patron would be threatened in his turn by the operation of the same causes. Thus the very corruption of the electorate corrected to some extent the vices of the system, and afforded a means by which new classes of society could obtain seats in Parliament and the representation of their interests in the House. Over fifty bankers, merchants and business men of all kinds, were members of the House of Commons in 1818.<sup>1</sup> Some of these had already founded

v. p. 152). Johnstone expressly asserts as an unquestionable fact (H. of C., May 19, 1809, *Parl. Deb.*, vol. xiv. p. 658) that "if 275 members were returned to Parliament by individual interests, as was stated in the Petition for Reform in 1797, the proportion is now greatly diminished. No one can deny the sentiment that now pervades every town and city in the empire; nor is it to be doubted that, in a very few years, their independence will be exerted in such a degree, that no returns will be made by individuals, but those who are possessed of burgage tenures."

<sup>1</sup> There were twenty-three bankers, of whom fifteen were from London: James Cocks, G. H. Drummond, William Heygate, Sir J. W. Lubbock, John Martin, Sir John Perring, John Ransbottam, Abraham Robarts, Rob. Shaw, Abel Smith, George Smith (Wendover), George Smith (Midhurst), Samuel Smith, Henry Thornton, Robert Williams; and eight from the provinces: R. A. Crickitt, R. H. Davies, John Latouche, Sir John Newport, Joseph Pitt, M. W. Ridley, Robert Morris, Thomas Thompson. Four sat for nomination boroughs, nine for boroughs of a mixed character, eight for open constituencies, two for counties,

## POLITICAL INSTITUTIONS

parliamentary families. Sir Robert Peel had begun the purchase of the patronage of the borough of Tamworth, one of whose seats he occupied. For his two sons he bought two other seats.<sup>1</sup> The banker Robert Smith, now Lord Carrington, had become the proprietor of two nomination boroughs. Of the four seats for these two boroughs, three were occupied by his near relatives. But even electoral corruption had its limits. In 1806 Major Cartwright had asked the electors of Boston what guarantee they possessed with a House of Commons elected under such scandalous conditions that Bonaparte would not purchase seats and obtain agents at Westminster.<sup>2</sup> In reality no such thing ever happened. The days of Louis XIV and the Stuarts had passed and English electioneering agents could be bought only

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one Scotch and one Irish county. There were thirty-five representatives of mercantile interests of all kinds. Among these we notice six manufacturers (Kirkman Finlay, John Hodson, Sir Robert Peel, George Philips, Sam. Horrocks, Richard Arkwright), three directors of the Bank of England (Alexander Baring, William Mellish, Thomas Whitmore), two directors of the East India Company (Sir Thomas Baring and John Jackson), twelve merchants (William Manning, Edward Protheroe, Samuel Thornton, J. Marryat, N. Sneyd, W. Smith, J. Irving, J. Bolland, Sam. Scott, Richard Sharp, John Staniforth, Robert Wigram), four brewers (Charles Barclay, Whitbread, the two Calverts), one director of an insurance company (Ch. E. Wilson), one manager of a private post (Palmer), one printer (A. Strahan), one bookseller (Joseph Butterworth), and the four members for the City of London. Fourteen of these represented nomination boroughs, six boroughs of a mixed character, twelve open boroughs, three counties (Surrey, Middlesex, and the Irish county of Cavan). To form a complete idea of the representation of the mercantile and industrial interest we should add to the above the names of the great landowners who owned and worked mines. The foregoing statistics, doubtless incomplete, are based on the *Return of the Names of Members of Parliament* where the professions of members are sometimes given, and on the list of the Members of Parliament in 1818, which is to be found with mention of their professions in the Black Book of 1818. The information thus obtained has been supplemented by numerous details mentioned incidentally elsewhere.

<sup>1</sup> He had sat as one of the two members for Tamworth since 1790. In 1818 both seats belonged to him, as the result of a transaction which cost him £132,000, and his son Robert was sitting for the borough of Chippenham. In 1817, his son, William Yates, had been returned for the borough of Bossiney.

<sup>2</sup> Cobbett's *Political Register*, November 15, 1806 (vol. x. p. 777).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

with English money. And again, no sooner did the electors exceed a mere handful than aspirations after independence, hard to repress, began to show themselves.

Certainly the electorate comprised but a very small fraction of the nation. The "Society of the Friends of the People," founded to promote parliamentary reform, estimated in 1793 that fifty-one English and Welsh boroughs, whose total electorate was under 1,500, sent 100 representatives to Westminster, and that 11,075 English and Welsh electors, who belonged to a certain number of boroughs carefully chosen, elected 257 members of the House of Commons. Nevertheless, the representation of the counties was undoubtedly of a very popular character. Anyone prepared to buy a forty-shilling freehold could obtain a vote. In the boroughs the system was not so democratic, but several disadvantages attaching to a system of pecuniary qualification were absent. The law fixed no definite sum to qualify for the franchise, thus disfranchising all whose wealth fell below that figure. The borough electorate consisted of 100,000 individuals, the haphazard selection of customs varying in different localities, and drawn indiscriminately from every class in the nation—aristocrats and men of the people, rich and poor, members of the middle class and the proletariat. In 1815 many European nations were considering the adoption of the British parliamentary system. Not a single one would have dared to admit so wide an electorate. Considerable time and peculiarly favourable circumstances would be needed before the principles of representative government could become in Continental countries what they were in the England of 1815—a hallowed tradition, part and parcel of the national heritage.

"All civilized Governments," wrote the *Edinburgh Review* in 1807, "may be divided into free and arbitrary: or, more accurately, . . . into the Government of England, and the other European Governments."<sup>1</sup> These words of the *Edinburgh Review* in 1807 could still have been written in 1815, even after the fall of Napoleon's empire. Obviously the system was in need of reform, and public opinion had already begun to press for reform. The south of England

<sup>1</sup> *Edinburgh Review*, April 1807, No. 19, Art. 1, *The Dangers of the Country* (vol. x. p. 11).

## POLITICAL INSTITUTIONS

was over-represented, while the north lacked adequate representation. The agricultural interest was too strongly entrenched, while the manufacturing interest was very insufficiently safeguarded. The list of boroughs needed revision and the number of electors might very well have been increased. The important question, however, was whether the electorate as constituted in the opening years of the 19th century would oppose an obstinate resistance to the demands of a new era and a transformed civilization. Fifteen years hence would come the decisive test. Twice in succession a House of Commons, elected under the system described above, would vote the reform of that very system and would force that reform upon the House of Lords. This proves that, unlike the House of Lords, the unreformed House of Commons already represented to a large extent the opinion of the country. It proves also that normally and constantly it was subject to the pressure of certain external forces whose character must now be defined.

## POPULAR LIBERTIES

### *The Right to Rebellion.*

The first of these forces was rebellion—whether actual or merely potential, effectively carried out or simply threatened. Throughout the 18th century England, the sole European country where the reigning dynasty had been set up as the result of a successful rebellion, had been the home of insurrection. There had been an outbreak of anti-Jewish rioting in 1753, when the Government had decided to grant the right of naturalization to the Jews domiciled in England. The Cabinet had yielded and repealed the statute. Extremely characteristic of English conditions was the speech in which Lord Hardwicke defended the policy of the Cabinet, as the only possible policy where a nation is governed by public opinion. "However much," he had said, "the people may be misled, yet in a free country I do not think an unpopular Measure ought to be obstinately persisted in. We should treat the people as a skilful and humane physician

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

would treat his patient; if they nauseate the salutary draught we have prescribed, we should think of some other remedy, or we should delay administering the prescription till time or change of circumstances has removed the nausea."<sup>1</sup> In 1768 there were riots against the Government. The popular hero Wilkes triumphed in the end over the opposition of Court and Cabinet. In 1780 an anti-Catholic riot broke out; during four entire days the centre of London was given up to pillage. A Government without a police force was powerless either to prevent these outrages or to repress them promptly. The right to riot, or as it was termed by the lawyers "the right of resistance," was an integral part of the national traditions. In vain does Blackstone, in one of the most embarrassed passages of his *Commentaries*, do his best to get rid of this right. He affirms that "the King is, and ought to be, absolute," but he adds "in the exertion of lawful prerogative," and he explains this to mean "so far absolute that there is no legal authority that can either delay or resist him." He denounces the "over-zealous republicans" who would grant "to every individual the right of determining" whether or no it is necessary to have recourse to resistance and "of employing private force to resist even private oppression." He does not, however, contest that there were "extraordinary" cases, where the first principles of society must be directly applied. Such would arise inevitably "when the contracts of society are in danger of dissolution, and the law proves too weak a defence against the violence of fraud or oppression."<sup>2</sup> But the current of history had changed its course during the last twenty years. It was now no longer England as in the 17th century, but France which had witnessed a popular revolution, the decapitation of a King, a military dictatorship, a Royalist restoration. In Western Europe France had succeeded England as the typical country of rebellion. Nevertheless, despite the anxiety aroused by the events in France, the English

<sup>1</sup> Lord Campbell, *Lives of the Chancellors*, vol. v. p. 124 n.

<sup>2</sup> 1 *Comm.* 250-1. Cf. Gisborne, *Duties of Man*, vol. i. pp. 97 sqq. In the same way Blackstone (1 *Comm.* 143-4) considers the right to "bear arms in self-defence" as "a public allowance, under due restrictions, of the natural right of resistance and self-preservation when the sanctions of society and laws are found insufficient to restrain the violence of oppression."

## POLITICAL INSTITUTIONS

remained faithful to their traditional creed. The orators and writers of the Opposition continued to maintain that the English people possessed a right of resistance in the last resort. Fox, Grey and Sheridan insisted upon this, even at the very height of the Jacobin scare. The *Edinburgh Review* was never weary of harping on this theme. "The sole check," declared this organ, "to the encroachments of power, and the oppressions of inceptive tyranny, is the spirit, the intelligence, the vigilance, the prepared *resistance*, of the people."<sup>1</sup> . . . "The great and ultimate barrier against corruption, oppression and arbitrary power must always be raised on public opinion—and on opinion so valued and so asserted as to point resolutely to *resistance*, if it be once insulted or set at defiance."<sup>2</sup> Nor should we regard this merely as the assertion of an abstract and theoretical right. From 1810 to 1815 both in London and in the provinces rioting had been the order of the day. In 1810 we find a riot directed against Parliament itself. It had been found necessary for the maintenance of order to bring up in haste to the capital an army of 50,000 men. In 1812 a regular Jacquerie broke out, which spread over the manufacturing districts of the Midlands, Yorkshire and Lancashire. Again, the February of 1815 witnessed a grave outbreak of rioting, directed against the Act of agrarian protection, whose clauses were being hastily passed through Parliament. The riots of 1812 had been merely the revolt of misery and want, the incoherent rising of a disorganized and leaderless rabble, which immediately united against it all the wealthy and ruling classes. The riots of 1815, on the other hand, were tolerated, encouraged, even perhaps directed, by leaders of industry, bankers and stockbrokers, who were bitterly hostile to the policy of the landowners and the agriculturalists. Parliament was besieged by the crowd, and the houses of the principal leaders of the party in office were pillaged. We may wonder what would have been the result of this popular agitation had not the return of Napoleon from Elba suddenly changed the current of feeling and saved the cause of order.

<sup>1</sup> *Edinburgh Review*, July 1809, No. 28, Art. 1, *Parliamentary Reform* (vol. xiv. P.).

<sup>2</sup> *Ibid.*, February 1811, No. 34, Art. 1, *Parliamentary Reform* (vol. xvii. p. 278).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

But even this did not put an end to the manifestations against the Government and the open-air meetings. On June 16th, on the very eve of Waterloo, Lord Castlereagh, riding through Whitehall, encountered a meeting unauthorized by the local authorities in which the leaders of the popular party were haranguing the crowd. He was recognized, insulted and followed through the Horse Guards to St. James' Park. That evening he thought it prudent to guard his house with troops.<sup>1</sup> In a few days' time, the peace of Europe was re-established; but the misery and discontent which had occasioned the risings of 1812 and 1815 did not disappear. Every one in Government circles foresaw a general insurrection—all the more dangerous that it could no longer be diverted by foreign warfare. Nor were even these sporadic manifestations of popular opinion required to keep the ruling classes constantly sensible of the possibility and danger of a popular rising. The proceedings at an election were a periodical reminder both to the newly elected members and to their noble patrons that riot formed part of the political traditions of the English people. In virtue of an unwritten law which enjoyed universal respect, the mass of inhabitants, voters and non-voters alike, played a very active part on polling days, when the rival candidates met face to face. The nomination day was equally a day of popular demonstrations. The candidates owed their constituents a speech, a declaration of their political principles, and the crowd flocked to hear them, to approve or disapprove, according to circumstances. In boroughs where the franchise was the monopoly of a small number of burgage holders or burgesses, and where the remainder of the inhabitants considered themselves robbed of their ancient civic rights by the tiny group of electors, they would often seize the opportunity of an election to pave the way by a noisy manifestation for a petition demanding from Parliament the enlargement of the franchise in their constituency. When, however, an election was contested, popular excitement knew no bounds. A French writer who visited England in 1818 and was present at an election declared himself unable to understand these "Westminster mountebanks . . . addressing a worthless rabble of whom not a man would vote for them." "There

<sup>1</sup> *Examiner*, June 18, 1815.

## POLITICAL INSTITUTIONS

is," he wrote, "an entire absence of dignity and greatness." It was all "mean parody and wretched farce." On the following page he describes the riot which broke out on the defeat of the popular candidate. The successful candidates were obliged by custom to ride in procession. They were immediately "pelted with filth, greeted with a shower of thick and black mud. . . . I saw Lord Nugent with one side all black. Lord Molyneux's face resembled a pug's. Lord John Russell attempted with difficulty to wipe off the stinking patches of dirt which continually bespattered his cheeks. . . . One of the servants received so violent a blow on the head with a stick that he fell from his horse unconscious. . . . Some had their windows broken and their furniture damaged. The houses of Lord Castlereagh and several others met with the same fate." The constables were insufficient to restore order, and the troops had to be called out. Such scenes shocked a visitor from the Continent, but they had long been familiar to the English public.

This tradition of rowdyism, however, did not lack its English critics. Even numbers of the Whig Opposition complained of it as enabling a wealthy candidate, who distributed money by handfuls and treated on a large scale, to acquire a low popularity which corrupted the public morals. Romilly, the typical Whig theorist, only consented with great difficulty to prepare for his candidature in 1812 by an electioneering campaign of the customary type, and openly showed the disgust he felt at the reception, though of a triumphal nature, accorded to him by the populace of Bristol.<sup>1</sup> On the other hand these rowdy customs found defenders in the Tory ranks. A Tory speaker protested in Parliament against the desire shown by certain reformers for "a filtering stone to clear away all the mud of poverty, vulgar mirth, etc., from popular elections." "Cockades," he continued, "and the liberty of huzzaing, were things which every Englishman admired; they contributed to give him an idea of the rights he enjoyed, and on the possession of which he prized himself."<sup>2</sup> This right of noisy and disorderly demonstration during an election was an integral part of the old English

<sup>1</sup> *Memoirs*, vol. ii. pp. 424 sqq.; vol. iii. pp. 8, 21-2.

<sup>2</sup> H. of C., March 21, 1806, Courtenay's speech (*Parl. Deb.*, vol. vi. pp. 516-17).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

system. The seat was being contested by two candidates who both belonged to the same class of society. The electors would vote for the candidate who had managed to make himself the more popular, who had displayed the greater activity in organizing those periodical saturnalia of which Johnston speaks,<sup>1</sup> the great political carnival which the common people regarded as their right. Even if we take into consideration the material advantages which the candidates might derive from victory at the polls, the enormous sums swallowed up in one election often exceeded all reasonable bounds. They are only explicable, if we regard the electoral contests in the light of a national sport, as popular, indeed more popular than horse-racing.<sup>2</sup> The rich incurred the expense for their own pleasure and for the pleasure of the people, and the passion which they put into the contest was a form of the gambling mania. Though the system was illogical and anarchic, it was free and popular. Just as the democratic nature of the constituencies with an extended franchise compensated for the oligarchy of the burgage and corporation boroughs, so the licence enjoyed by the populace at elections balanced the aristocratic composition of the House of Commons. The members of the aristocracy were compelled to come into personal contact with the masses, to solicit their favour, possibly to incur their anger. After the repeated reforms to be effected in the British franchise in the course of the 19th century, this counterpoise would no longer be so necessary, and the part played in elections by the mob was destined to vanish, as Parliament became more truly representative of the people.

<sup>1</sup> Quoted by Jephson, *The Platform*, vol. i. p. 86.

<sup>2</sup> A good instance of this feeling is to be found in a letter in the *Morning Post* of November 13, 1812, from a correspondent who, writing on December 4th, describes the scene at Clonmel on an election day: "All the neighbouring windows are stuck thick with company—elegant ladies, fashionable youths, the gay and the grace, quakers and soldiers, the politicians and the fribble—all partake of the pleasure, all own the zealous emotions." The article is headed *Election Sports*. In another notice (*Morning Post*, October 21, 1812) a correspondent, who writes from Galway, on October 15th, employs the language of the turf: "The election for this county will commence on Monday next. Five candidates will start, etc."

## POLITICAL INSTITUTIONS

### *The Rights of Petition, of Public Meeting, of Association.*

The threat of rebellion was the first weapon wielded by public opinion to overawe the Government in office and even the House of Commons itself. And the popular electioneering demonstrations may be considered an attenuated form of rebellion. But by the British Constitution the public possessed other and more legal methods by which to remind the ruling classes of its existence and to intervene in parliamentary disputes. Blackstone lays down that in cases where a right had been violated, and the regular course of justice is powerless to redress the violation, a further right was possessed by every subject, the right to address a petition to the King, or to one or other of the two Houses, for the redress of the wrong inflicted on the petitioner. But this right to petition involved the right of private persons to meet for the joint preparation and signature of the statement of their grievances. It involved, moreover, the right to meet for deliberation on the opportune moment to present a petition. Thus were the people brought by degrees to the belief that they had a right to form permanent associations to maintain the defence of their interests. The right of petition, the right of public meeting, the right of association (though to be sure this last expression is absent from the legal terminology of the United Kingdom) were rights of the subject, recognized as such by the executive and by the legislature.

This recognition was, however, by no means unconditional. The eighteenth-century Whigs, to protect themselves against a Tory reaction, had put serious restrictions upon the right of meeting. The Riot Act passed in 1714 as the permanent law of the land, conferred upon a single justice of the peace authority to disperse after a delay of one hour any meeting of at least twelve persons "unlawfully assembled together, to the disturbance of the public peace."<sup>1</sup> And this statute indemnified the magistrate in advance, if his efforts to disperse the crowd involved any deaths. Blackstone considered this

<sup>1</sup> "Being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace" (1 Geo. I, st. 2, cap. 5).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

statute as of sufficient bravity to counterbalance, in conjunction with the establishment of a standing army and the increase of the national debt, all the measures adopted in 1688 to limit the Royal Prerogative.<sup>1</sup> Nevertheless, individuals arrested by order of a magistrate in execution of the Riot Act were secured from the possibility of arbitrary imprisonment or condemnation. In virtue of the Habeas Corpus Act they were entitled to demand an immediate trial in a regular court, where the judge was assisted by a jury. But during the last twenty years the right of meeting and the right of association had been the object of more serious attacks.

The French Revolution had been echoed in England by a democratic agitation in 1792. The ruling classes had taken fright and had passed a series of very severe statutes to repress the movement. Repeated statutes had suspended temporarily the operation of the Habeas Corpus Act.<sup>2</sup> In 1795 a statute had been passed dealing with seditious meetings and assemblies, to have effect for the three following years.<sup>3</sup> For any meeting of more than fifty persons notice had first to be given to three justices of the peace. Every magistrate was empowered to break up with the help of the troops any meeting which had not complied with this formality; and even when a meeting was itself in order, a magistrate might break it up, if in his opinion the speeches were tending to arouse among the people hatred or contempt of the King, the Government or the Constitution. Any breach of these provisions was punishable with death. By this statute the right of public meeting was made subject to the discretion of the local Bench of magistrates, and further provisions of this Act restricted even the freedom of association. All premises not open to the general public, where societies held regular political discussions, henceforth required the preliminary authorization of the magistrates

<sup>1</sup> 4 Comm. 433-4.

<sup>2</sup> 34 Geo. III, cap. 54 (May 23, 1794); 35 Geo. III, cap. 3 (February 5, 1795); 38 Geo. III, cap. 36 (April 21, 1798); 39 Geo. III, cap. 15, 44 (January 9, May 20, 1799); 39 and 40 Geo. III, cap. 20 (February 28, 1800); 41 Geo. III, cap. 32 (December 31, 1800); 41 Geo. III (United Kingdom), cap. 26 (April 18, 1801).

<sup>3</sup> 36 Geo. III, cap. 8. Renewed (41 Geo. III, cap. 26) "until six weeks after the commencement of the next session of Parliament."

## POLITICAL INSTITUTIONS

and were submitted to their constant supervision. When the Act of 1795 expired in 1799 a new Act imposed fresh restrictions upon the freedom of association.<sup>1</sup> Five important societies were suppressed, and all societies which required their members to take an oath unrecognized by the law were declared to be *ipso facto* illegal, as also were all federations of societies. The penalty imposed for breach of these provisions was transportation for seven years. And to this Act directed against political associations, another was added against combinations of workmen and trade unions. This statute prohibited unions formed for the purpose of obtaining higher wages, and empowered the magistrates to condemn summarily all infractions of the Act. This Combination Act, originally passed in 1799 as a temporary measure, was made permanent in 1800 under a slightly modified form.<sup>2</sup> Thus at the very time, when on the other side of the Channel the Jacobin Republic was nearing its close, in England an entire code was being drawn up against the right of public meeting and the right of association.

What measure of success attended this legislation? It would certainly appear that the law against trade unions remained largely inoperative, and that in default of an efficient police English statesmen were, as a rule, indisposed to embark on a contest with these unions, a contest whose issue might have been humiliating for the Government. We must also remember that the freedom of religious associations remained unimpaired and that the penal laws formerly enacted against Catholics were either repealed or applied with an ever increasing laxity. The Methodist sects prospered, their open-air meetings multiplied, and their organization received the explicit sanction of law. But our present concern is neither with the religious nor with the economic life of the nation. The question at present before us is to ascertain the extent to which the political life of the country had suffered from the three statutes above enumerated. Though it is true that the propaganda of the democratic associations underwent a temporary decline, it is equally

<sup>1</sup> 39 Geo. III, cap. 79 (July 12, 1799). We must add to this a statute against the administration of illegal oaths (37 Geo. III, cap. 123, 1797).

<sup>2</sup> 39 Geo. III, cap. 81; 40 Geo. III, cap. 106.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

true that it had given proof of renewed vitality during the last decade. Towards the close of 1806 the Middlesex Club had been founded in London, whose members, numbering about 300, paid an entrance fee of one guinea and an annual subscription of half a guinea. The object of this club was to purify political life, to emancipate it from the two-fold influence of wealth and social rank, and to secure the return of democratic candidates, without the labour and ruinous expense of an electoral campaign.<sup>1</sup> Societies similar in character were formed at Bristol and at Westminster.<sup>2</sup> In these societies—to which the provisions of the law did not apply, as they were neither secret nor combined into a wider group—we see the germ of the future democratic organization of the great political parties. About the same date the aged Major Cartwright revived the propaganda on behalf of universal suffrage, and under his influence were founded throughout the country the Society of "The Friends of Parliamentary Reform," the Hampden Club and the Union Society.<sup>3</sup> From 1812 to 1814 the "Luddite" associations were spreading disorder through the manufacturing districts of Yorkshire, Cheshire and Lancashire. The Cabinet, not content with employing against them the existing

<sup>1</sup> Cobbett's *Political Register*, October 25, 1806 (vol. x. pp. 662 sqq.).

<sup>2</sup> For the Patriotic and Constitutional Association of Bristol, see Cobbett's *Political Register*, August 8, 1807 (vol. xii. pp. 210 sqq.). For the Westminster Club for promoting Parliamentary Reform, see *Examiner*, November 8, 1812. The latter Club was more democratic than the Middlesex Club, founded in 1806. The entrance fee was only 6d., and there was also a weekly subscription of 2d. (in place of an annual subscription, which it was found more difficult to secure).

<sup>3</sup> *Life and Correspondence of Cartwright*, vol. ii. p. 377 (Rules of the "Union for Parliamentary Reform," June 10, 1812), p. 380 (Rules and list of members of the Hampden Club). Nor should we fail to remark the increasing reluctance shown by Parliament during the years preceding 1815 to adopt legislation hostile to political liberty. When the Act of 1795 expired in 1809 the Ministry asked that the Act of 1799 should be in consequence revised and rendered more stringent. Parliament refused to accede to the desire of the Cabinet and the Government deemed it useless to insist. H. of C., May 18, June 9, 1809 (*Parl. Deb.*, vol. xiv. p. 615). Cf. H. of C., February 24, 1817, speeches of Lord Castle-reagh, of Romilly, of the Solicitor-General (*Parl. Deb.*, vol. xxxv. pp. 590 sqq.).

## POLITICAL INSTITUTIONS

statutes, obtained from Parliament a further statute of repression. No doubt the societies for political propaganda organized by Cartwright were as peaceable and as harmless as their head. No doubt the Luddite associations were rather unions of workmen than political associations. Without political creed or programme, their aim was the destruction of machinery and factories, not a political revolution. It was, nevertheless, impossible to regard the future without apprehension, and it was easy to foresee the day when the two forms of agitation would unite, and the Government would be faced with a revolutionary movement far more dangerous than the Jacobin movement of 1795. Against the venerable English tradition of popular disorder, the Tory reaction was helpless.

It was, in fact, impossible to abolish freedom of association without at the same time abolishing freedom of meeting. But King George's ministers had never been able to effect the complete abolition of the latter. The county meetings were a regular institution, in many respects conservative, enjoying the consecration of tradition. These meetings were specially exempted by the Act of 1795 from the operation of the new statute. The summons to attend was issued by the sheriff. It was the custom that only the freehold electors of the county took part in the meeting. It was concluded by the adoption of an address drawn up by the local authorities in accordance with a solemn and traditional formula. The matter of the address was regularly an expression of loyalty to the Sovereign.<sup>1</sup> But although the presence of the sheriff and the exclusion from the meeting of all the inhabitants of the county not on the list of voters were considered obligatory, these restrictions were not based on any written law. In 1780 the Duke of Richmond in Sussex had neglected to observe the former.<sup>2</sup> And more recently the independent gentlemen of Cornwall had violated both.<sup>3</sup> Certain counties,

<sup>1</sup> For the procedure, see Jephson, *The Platform*, vol. i. pp. 16-17. Cf. the opinion expressed by the radical agitator, Cartwright, on the subject of these county meetings (*Life and Correspondence*, vol. i. p. 327): "I must confess I have seen too much not to be thoroughly sick of the old dull road of meetings of freeholders convened by the aristocracy."

<sup>2</sup> Jephson, *The Platform*, vol. i. p. 103.

<sup>3</sup> Oldfield, *Representative History*, vol. iii. p. 135.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

for instance Middlesex, were vast urban democracies, where a county aristocracy did not even exist. In other places the aristocracy was split into rival factions which at times did not shrink from imparting an almost revolutionary character to their quarrels. In 1805 and in 1807 county meetings had denounced the scandals in high places, had demanded the impeachment of Lord Melville, and the retirement of the Duke of York. In 1815 they called upon the Ministry to abolish the property tax. It is clearly impossible to draw any clear line of demarcation between the county meeting held according to legal forms and the popular meeting which the Tory legislator desired to prohibit. During the last few years the English had been making a constantly increasing use of the right of meeting, as also of the right of petition inseparable from it.

The right of petition had been affirmed by the Bill of Rights of 1688. In virtue of this statute every British subject possessed the right to address a petition to the King and to the two Houses. It is true that a statute of the Restoration<sup>1</sup> had submitted the exercise of this right to certain restrictions, had made the presentation of a petition by a gathering of more than ten persons illegal, and had laid down that every petition signed by more than twenty persons whose object was an alteration of the established institutions must have received the signature either of three magistrates or of the majority of a grand jury. But although Blackstone considered the statute as still in force, and expressed his approval of it,<sup>2</sup> no one thought of applying it except in one exceptionally troublous year, namely during the anti-Catholic riots of 1780. When in 1795 William Pitt introduced his Bill to repress seditious meetings he expressly disclaimed any intention of interfering with the right of petition.<sup>3</sup> This right, therefore, throughout the whole period of the Tory reaction remained at the disposition of the public, a means of bringing peaceful pressure from without to bear upon the legislature, and of preventing Parliament from passing statutes without regard to public opinion. A Member of Parliament

<sup>1</sup> 13 Car. II, st. 1, cap. 5.

<sup>2</sup> 1 Comm. 143. Cf. 4 Comm. 147.

<sup>3</sup> H. of C., November 10, 1795, Pitt's speech (*Parl. Hist.*, vol. xxxii. pp. 274-5).

## POLITICAL INSTITUTIONS

considered himself obliged to present to the House of Commons any petition signed in his constituency, even when he disagreed with its object.<sup>1</sup> Those who did not possess the franchise could sign a petition, and could thus take an indirect part in public life and warn the Government that if no regard were paid to their wishes, a discontent would be aroused which might easily assume a form dangerous to the public peace. The opponents of the slave trade were first to make a systematic use of the right of petition. Their magnificently organized agitation had obtained a decisive victory in 1806. Collective petitions were henceforward the order of the day. In 1812 Brougham had secured the revocation of the Orders in Council by organizing petitions on a large scale, and the agitation of 1814 which followed immediately the restoration of peace, and whose object was to protest against the obstacles which Parliament desired to impose upon the importation of foreign corn, also took this form. Petitions to this effect had already been circulated in Glasgow in 1813, and it was in Glasgow that the movement was renewed in the following year. Thence it reached Lancashire and quickly spread throughout the length and breadth of England. Mr. Protheroe, a Whig member for Bristol, collected 22,445 signatures in his constituency. In five days 20,000 were brought to Leeds. All, or almost all, the large towns of the kingdom sent up petitions. A few months of truce followed. It was the parliamentary vacation, the plans of the Cabinet were still uncertain and the petitioners hoped that they had succeeded in alarming the Government. It was, however, plain by the winter that the policy of dear bread had won a decided victory in the Cabinet, and the Corn Bill was introduced. The agitation was renewed immediately. On February 7, 1815, forty-two petitions were presented to Parliament. On March 4th a mass meeting was held in London, at which city men of every shade of political opinion were present. On this occasion 40,571 signatures were collected within ten hours. The petition from Manchester bore 52,000 names. Undismayed by these demonstrations the Cabinet and its majority in Parliament persisted in their

<sup>1</sup> H. of C., May 17, 1813, Canning's speech; April 27, 1814, speech of W. Smith. H. of L., March 6, 1815, Lord Derby's speech (*Parl. Deb.*, vol. xxvi. p. 216; vol. xxvii. p. 574; vol. xxx. p. 2).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

intentions, the protectionist Corn Bill was passed and the meetings degenerated into riots. But in spite of its ultimate failure, the monster agitation had made a deep impression, "It is the first time," remarked the *Morning Chronicle*, "when a majority of the adult male population of England has petitioned the two Houses of Parliament on any subject."<sup>1</sup>

### *Freedom of the Press.*

Employment of the right of meeting and of the right of petition merely enabled the governed to exert a somewhat spasmodic pressure on the Government at exceptionally critical periods. But we must not, therefore, imagine that the British public at this period was without any means of exercising a permanent control over the policy of Parliament. On the contrary, for a century past, and especially during the last fifty years, there had been in existence a powerful instrument of public control, an instrument which came to be regarded as part of the unwritten Constitution of the Realm, namely the political Press. The English maintained that in their country the Press was free. By this they did not mean that no expression of opinion was criminal or that a journalist could without fear of prosecution hold up to hatred or contempt either the Constitution or an individual statesman, but that since the closing years of the 17th century the Government had lost the right of preliminary censorship over printed matter. England was the sole country in Europe where liberty of the Press in this sense existed. All political parties willingly or unwillingly agreed to declare this liberty inviolable. The opponents of the Court party saw in it their surest guarantee against a despotic reaction. "Give me," exclaimed Sheridan in 1810, "but the liberty of the Press, and I will give to the minister a venal House of Peers—I will give him a corrupt and servile House of Commons—I will give him the full swing of the patronage of office . . . armed with the liberty of the Press I will go forth to meet him undismayed."<sup>2</sup> Indeed, the classic toast of Whig banquets

<sup>1</sup> *Morning Chronicle*, March 15, 1815.

<sup>2</sup> H. of C., February 6, 1810, Sheridan's speech (*Parl. Deb.*, vol. xv. p. 341).

## POLITICAL INSTITUTIONS

was "The liberty of the Press—'tis like the air we breathe—while we have it we cannot die."<sup>1</sup>

We should hardly expect, however, to find that the liberty of the Press had been immune from attack throughout the last half-century. During the first half of the reign before the war with France it had gained more ground than it lost. It was in vain that Parliament had attempted by means of antiquated legal decisions, originally intended to protect the House of Commons against the abuse of the Royal Prerogative, to prevent the publication of their debates in the newspapers. A protracted and stormy conflict had ended in the capitulation of the Tories. The extension in 1792 of the powers of the jury in libel cases furnished yet another guarantee for the liberty of journalists. With the anti-Jacobin scare, however, a new epoch opened, and the party of reaction attempted to take its revenge.

A royal proclamation of May 21, 1792, against "criminal and seditious writings" was the Government's declaration of war upon the journalists. Legislation of a novel kind followed. An Act of 1795 punished persons found guilty of having incited by speech or writing to hatred or contempt of the King or the Government, with penalties amounting to seven years' transportation in the case of a second offence.<sup>2</sup> An Act of 1798 prohibited the anonymous publication of newspapers.<sup>3</sup> Six clauses of the Act of 1799 against seditious societies imposed a system of registration upon the printers of books and newspapers, also upon the owners and even the makers of presses and type.<sup>4</sup> Moreover, even apart from special legislation, the Government possessed a number of indirect means to fetter the freedom of the Press. The custom was established with ever-increasing stringency that those prosecuted by the Government for libel might not prove the facts alleged. The procedure by "ex-officio informations"

<sup>1</sup> F. K. Hunt, *Fourth Estate*, p. 276. Cf. letters of the Earl of Dudley to the Bishop of Llandaff, pp. 57-8, August 9, 1814: "Every Englishman, from Johnny Grotes' House to the Land's End, is certain that he knows the worst—that nothing is concealed—that all the materials for judgment are before him—and that by reading and comparing the newspapers and journals, he may be just as wise as if he lived within the sound of Bow-bells."

<sup>2</sup> 36 Geo. III, cap. 7, §2.

<sup>3</sup> 38 Geo. III, cap. 78.

<sup>4</sup> 39 Geo. III, cap. 79, sec. 23-9.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

enabled the Attorney-General to dispense in the prosecution of journalists with the complicated formalities of a presentation by the grand jury. He could, moreover, bring journalists before a court where the judge was assisted not by the "common jury," the assize jury, but by a "special jury," which was selected according to different principles, and could be summoned whenever the Government pleased. Journalists and their counsel complained, with or without justification, that a special jury was too often biased in favour of the prosecution.<sup>1</sup> The Attorney-General could also protract at pleasure the interval between the information and the trial. During this interval he had the right to reverse his original decision and abandon the prosecution. Even so the journalist had been submitted to the threat of a prosecution, and this intimidation necessarily diminished his freedom. And in any case, even if the verdict were one of acquittal or if the trial were abandoned, the accused had to pay the costs.<sup>2</sup> The Government also took advantage of the financial difficulties with which it was confronted to raise the stamp duty from time to time.<sup>3</sup> The existence of the newspapers was thus made increasingly difficult.

The zeal displayed by the Government in the repression of excesses on the part of the Press was very considerable till the Peace of Amiens,<sup>4</sup> but was undoubtedly relaxed during

<sup>1</sup> For denunciations of the special jury system, see Cobbett's *Political Register*, February 27, 1811; Bentham, *Elements of the Art of Packing (Works*, vol. v. pp. 61 sqq.). Blackstone, on the other hand (3 *Comm.* 357-8), depicts the institution as a favour granted to the accused. Cf. the Attorney-General's speech (H. of C., March 28, 1811, *Parl. Deb.*, vol. xiv. p. 572). We may add that Lord Holland, in a speech delivered in the House of Lords in support of relaxation of the Press laws, does not express himself at all decidedly on this point (H. of C., March 4, 1811, *Parl. Deb.*, vol. xix. p. 143).

<sup>2</sup> On the whole question see H. of L., March 9, 1811, Lord Holland's speech (*Parl. Deb.*, vol. xix. p. 129). Cf. C. Jephson, *The Platform*, vol. i. p. 183).

<sup>3</sup> In 1776 Lord North raised it from 1d. to 1½d. Pitt in 1789 raised it to 2d., in 1797 to 2½d., in 1804 to 3½d. In 1815 it was raised to 4d. (Grant, *Newspaper Press*, vol. i. pp. 221-3). Lecky, *History of England*, vol. iii. p. 470, corrects a mistake of date made by Grant.

<sup>4</sup> In 1795 the Attorney-General, Sir William Scott, afterwards Lord Eldon, expressed his satisfaction "that in the last two years there had been more prosecutions for libels than in any twenty years before" (Campbell, *Lives of the Chancellors*, vol. vii. p. 120).

## POLITICAL INSTITUTIONS

the years immediately following. Between 1801 and 1807 the average yearly number of prosecutions did not exceed two; only one such trial took place during the Ministry of Fox and Lord Grenville. Then the prosecutions were renewed.

In 1808 the adoption of new regulations hostile to the freedom of the Press rendered the existing legislation even more severe. All distinction was abolished between the procedure of ex-officio informations and the procedure of ordinary prosecutions.<sup>1</sup> The number of prosecutions increased. Between 1808 and 1810 there were forty-two ex-officio informations, and eighteen trials of journalists.<sup>2</sup> An attack was made on important journalists such as Cobbett, whose *Political Register* was notorious for its attacks upon leading politicians, and Perry, the universally respected proprietor of the *Morning Chronicle*. And this period also witnessed a final attempt to restrict the right claimed by the Press to report parliamentary debates. This right was not legally theirs. A standing order forbade the publication of debates. Since this order prevented any official account of the sessions, debaters in both Houses were obliged to endure the publication of their speeches in an imperfect and often deliberately garbled report. This led to frequent complaints and the prosecution of journalists.<sup>3</sup> It was only by favour of the House, that the public was permitted to be present at the sessions of Parliament. Each member had the power to call attention at will to the illegal presence of "strangers," and the "gallery" must then be cleared immediately. This actually happened in 1810. When the House of Commons began the discussion of a disastrous military expedition, a member successfully demanded that the House should expel the public and constitute itself a secret committee. Windham, who had made himself famous in Parliament for his unwearied protests against the impudence of the Press, seized the opportunity to utter once more his

<sup>1</sup> 38 Geo. III, cap. 58. For the bearings of this Law see Lord Erskine's speech (H. of L., May 24, 1808, *Parl. Deb.*, vol. ii. p. 541).

<sup>2</sup> H. of C., March 28, 1811, Lord Folkestone's speech (*Parl. Deb.*, vol. xix. p. 549). Also *Return of the Ex-Officio Informations filed for Political Libel and Seditious Conduct . . . since 1807, 1821.*

<sup>3</sup> See particularly H. of C., December 27, and Dec. 31, 1798 (*Parl. Hist.*, vol. xxxiv. pp. 148 sqq.). H. of C., February 15, 1813 (*Parl. Deb.*, vol. xxiv. p. 518).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

hatred of the reporters who listened to his speech and took it down, a vile set, "bankrupts, lottery-office keepers, footmen and decayed tradesmen."<sup>1</sup> An obscure City politician, an old Jacobin of 1792 named John Gale Jones, procured the adoption by a small democratic club of an order of the day protesting against this exclusion of the public. He was arrested without any legal formality by order of the Commons for breach of privilege and brought before the Bar of the House. Sir Francis Burdett, the representative of democracy in Parliament, published in Cobbett's *Political Register*<sup>2</sup> a lengthy address to his constituents, in which he protested against this procedure. Thereupon he was himself imprisoned.

It was an unskilful and useless attempt at reaction. For we must regard it not as an energetic attack on the Press by the Government, but as a desperate effort of self-defence against journalists, whose independence and audacity were constantly increasing. The Duke of York scandal implicated the War Office and affected the honour of the Royal Family. The newspapers loudly voiced the popular indignation. Burdett had been in prison over a year, and fifteen days had passed since the condemnation of Cobbett, when on May 30, 1810, the Duke of Cumberland scandal occurred. The ministers called upon to deal with events so disastrous to the prestige of the Government were men of mean abilities and personally unpopular. It availed them little to multiply prosecutions. Every case must go before a jury and the Government had therefore to consider, before undertaking a prosecution, whether or no it could count on the desired condemnation. The indefinite postponement of so many trials was not perhaps due to a Machiavellian scheme, as the Opposition journalists would have us believe. The Attorney-General hesitated and temporized, because he dared not face a jury. Though Cobbett had been found guilty, Perry had been acquitted. Not only did the jury often acquit those whom the Government required it to condemn. The foes of the Government, when libelled by the official Press, could appeal to it in their turn and obtain damages. This course was

<sup>1</sup> H. of C., February 6, 1810 (*Parl. Deb.*, vol. xv. p. 320).

<sup>2</sup> Cobbett's *Political Register*, March 24, 1810 (vol. xvii. pp. 412 sqq.). H. of C., March 27, 1812 (*Parl. Deb.*, vol. xvi. p. 27).

## POLITICAL INSTITUTIONS

adopted, for instance, in 1810 by Roger O'Connor, a wealthy London merchant and a friend of Sir Francis Burdett.<sup>1</sup>

Even if the condemnation of the journalist were secured, the Government could scarcely be said to have gained much by the trial. The publicity of the article incriminated was at once increased tenfold. The Attorney-General was obliged to reproduce in his pleading the text of the article, and on the following day the entire Press was authorized to reproduce with impunity, as part of the Attorney-General's accusation, a writing judged by the Government libellous or seditious. In 1809 an article by Cobbett on the question of corporal punishment in the Army had been held to compromise military discipline and the safety of the realm. But as a result of the prosecution the question of flogging in the Army was discussed in every newspaper. Fresh trials were commenced, which of course served only to bring the matter before an even wider public. In 1811 the Government promised reforms. A condemned journalist was not subject in prison to the treatment of criminals and ordinary offenders. When Cobbett was imprisoned in Newgate, he spent his mornings editing his paper, his afternoons receiving his political friends.<sup>2</sup> He employed his two years' imprisonment in conducting a campaign on behalf of the freedom of the Press. The contest between the House of Commons and Sir Francis Burdett provoked a riot in the London streets. Only the timidity of Sir Francis, who avoided the manifestations prepared in his honour, deprived the popular triumph of its final crown. And even so the Government was obliged to yield. Already in 1809 journalists had secured certain reductions in the stamp duty.<sup>3</sup> The Act of 1808, empowering

<sup>1</sup> Cobbett's *Political Register*, December 22, 1810 (vol. xviii. pp. 1249 sqq.). The *Morning Post*, a Government organ, was sentenced to pay £500 damages.

<sup>2</sup> See Cobbett's letter to Creevy, Newgate, September 24, 1810 (*Creevy Papers*, vol. i. p. 134). It is only fair to add that this lenient treatment gave rise to suspicions on the part of some of Cobbett's colleagues. Leigh Hunt, in the *Examiner* of July 12, 1812, accused Cobbett of having entered into negotiations with the Government and of having offered to suspend the publication of his paper if he were not condemned, and during his imprisonment accused him of systematic toadying to the Duke of York and the Prince of Wales.

<sup>3</sup> The rebate of 16 per cent. granted since 1797 to newspapers whose price did not exceed 6d. was extended to all newspapers

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

the Attorney-General to imprison accused journalists as a precautionary measure, was applied on one single occasion, and fell thenceforward into disuse.<sup>1</sup> In 1811 the Government relaxed the provisions of the penal statutes of 1798 and 1799,<sup>2</sup> and during the four years following the number of trials for expressions of opinion once more became insignificant.<sup>3</sup>

### *Modern Journalism.*

The empire of the Press was in process of foundation. To be sure, a large and important Press was already in existence at the close of the 18th century, and the numbers of newspapers had scarcely increased since that date. The Progressive increase of the stamp duty, the enhanced cost of paper, the rise of salaries, had necessitated an increase in the price of newspapers. In 1815 a big daily paper cost 7d.<sup>4</sup> But twenty-five years of dramatic events, of revolutions, of battles had aroused in the public both of London and the provinces an insatiable appetite for news, which had enabled journalism to develop in the face of all obstacles and had increased the circulation of the papers already in existence.

In London there were daily papers, both morning and evening, of which several editions appeared on days when any event of importance occurred.<sup>5</sup> There were papers

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without exception. 49 Geo. III, cap. 50. See H. of C., April 27, 1809 (*Parl. Deb.*, vol. xiv. p. 266).

<sup>1</sup> H. of L., March 4, 1811, Lord Ellenborough's speech (*Parl. Deb.*, vol. xix. p. 148).

<sup>2</sup> 51 Geo. III, cap. 65.

<sup>3</sup> *Return of the Ex-Officio Information . . .* 1821. Prosecutions for Libel, Blasphemy and Sedition 1813-22. 1823 also Prosecutions for Libel, etc. . . . during the reigns of Geo. III and Geo. IV 1830.

<sup>4</sup> Interesting information as to the financial aspect of the production of an English newspaper at this period is to be found in Cobbett's *Political Register* for March 4, 1809. Cf. J. Grant, *Newspaper Press*, vol. i. pp. 223-4, on the rise of prices—3d. till 1775, 3½d. till 1789, 4d. till 1797, 6d. till 1815, and in 1815 7d.

<sup>5</sup> *Examiner*, March 19, 1815: "One of the evening papers (the *Star*) had no less than five editions yesterday, altogether containing the following assertions: That Marseilles had offered

## POLITICAL INSTITUTIONS

appearing thrice weekly, and weekly papers which summed up every Sunday the events of the week, and flourished in spite of all the efforts made by the Puritan party to prevent this violation of the Sabbath. Many of these papers, edited by adventurers and banned by the police, endured a highly precarious existence, always on the look-out for some scandal which would enable them to enjoy a few weeks of ephemeral popularity. Far above such miserable rags five or six leading newspapers stood out—the *Times*, the *Morning Chronicle*, the *Morning Post*, the *Courier* and the *Morning Herald*. These consisted of four pages of small print. The first and fourth of these pages were devoted to advertisements. On the second page were two columns of extracts from the Parisian newspapers. Then followed advertisements of theatres and the news of the day, chiefly concerning the internal politics of the country. Sometimes, though by no means every day, one of the items of news was accompanied by a lengthy comment which already constituted a leading article. The third page contained foreign news, sporting and society news, law reports, and an occasional article of dramatic criticism. When Parliament was sitting, the whole of the second page was occupied by a report of the proceedings in the House, a report which would often take up, in addition, a part of the third page and might even, if a matter of great importance were under discussion, fill almost the entire paper. We find already, on a smaller scale, the arrangement of a leading English newspaper of our own time. The *Times*, which had been printed for a year past by steam,<sup>1</sup> enjoyed a daily circulation of 5,000, the *Courier* sometimes reached a circulation of 10,000.<sup>2</sup> The proprietors of leading newspapers, such as John Walter of the *Times*, Daniel Stuart

a reward of two millions for the head of Bonaparte—that Ney had taken an oath to bring him alive or dead to Paris—that the Parisians begin to manifest some enthusiasm for the Bourbons—that the Minister of Marine had been displaced—that Bonaparte had retreated with 4,000 men into the mountains—that Lefebvre was taken—that Victor, Dupont and Ney were advancing against Bonaparte—and that he was, in fact, surrounded.”

<sup>1</sup> F. K. Hunt, *Fourth Estate*, vol. ii. pp. 171-2.

<sup>2</sup> Grant, *Newspaper Press*, vol. i. pp. 355-6; vol. ii. p. 4. On some occasions the circulation of the *Courier* had reached 16,500. With the restoration of peace its circulation began to decline.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

of the *Morning Post*, Perry of the *Morning Chronicle*, were persons of no slight importance, and the magnificent appointments of their offices, their "rosewood tables and silver inkstands," awed and dazzled poor editors.<sup>1</sup> Among the weeklies Cobbett's *Political Register* was undeniably in the very front rank—a paper always violent, often scurrilous in its attacks not only upon the party in office but also upon the moderate Opposition, but excellently informed all the same. An equally high position was held by Leigh Hunt's *Examiner*—a paper as "radical" in its political complexion as the *Register*, but first of the London journals for literary merit.

In the provinces each county town possessed its weekly paper, often two papers—one supporting the Government, the other the Opposition. These papers were modelled on the London papers. But the news from the Continent was not so recent, and the local news was more detailed. An excellent system of distribution enabled the proprietors to sell their paper the moment almost it was printed, in all the market towns of the district, sometimes even to dispatch copies to other country towns, there to compete with the local Press. These proprietors prided themselves on an unimpeachable respectability, and their papers were serious in tone, independent and well supplied with information. Their readers were the local gentry, shopkeepers and farmers—a fairly extensive and extremely constant and reliable public. The total number of newspapers published in London and in the provinces was about 250. In 1753 the stamp duty was paid on 7,411,757 copies, in 1792 on 15,005,760: that is on more than double. In 1801 it was paid on 16,000,000: the number had hardly increased a million during the previous decade. Then progress began afresh: in 1821 duty would be paid on 25,000,000 copies.<sup>2</sup>

The commercial invention on which modern English journalism was based was the combination of the newspapers

<sup>1</sup> Charles Lamb, *Essays of Elia, Newspapers Thirty-five Years Ago*.

<sup>2</sup> See *Stamps issued for Newspapers* where we find the official figures for the years 1801 and 1821, published in 1822. (They are reproduced in the *Annual Register* for 1822, pp. 350–2.) In 1821 the total number of newspapers was 278: London dailies=16, London papers appearing thrice weekly=8, London weeklies=32, English local papers=16, Scotch d.=31, Irish d.=56. The sale of London papers=16,254,534 copies; the sale of local papers=8,525,252.

## POLITICAL INSTITUTIONS

with the advertiser. This combination dated from the decade between 1770 and 1780, when George III was engaged in a stubborn contest with the London Press. The Press, though formidable through the savagery of its attacks, had nevertheless fallen very low in public opinion. It was no longer conducted, as during the earlier half of the century, by eminent men of letters, by men of high birth, by statesmen, men such as Steele and Addison, Bolingbroke and Pulteney; it had fallen into the hands of literary adventurers, of sharpers, of rogues of every description. Little by little it was to raise its head once more by adapting itself to the novel needs of the period and by becoming an industry. No longer, as of old, was it to be literary and witty; henceforth it would be serious, commercial, practical. It is true that the profession of a journalist was still regarded as barely respectable; but a few years had passed since the attempt of the Bar to prevent barristers from engaging in journalism. In 1825 Walter Scott was to refuse for his son-in-law the post of chief editor of a leading London paper, as being in his opinion unworthy of his social position.<sup>1</sup> Nevertheless, the proprietor of a newspaper was scaling the social ladder and was conquering by degrees the position naturally taken in a mercantile society by men of commerce and business men of all kinds. Usually a group representative of a particular interest—for example, a syndicate of coachbuilders, of auctioneers, of booksellers, or of brewers—advanced the necessary capital for the foundation of a new paper to obtain thus the free use of the advertisement columns. Once the paper had achieved success, the editor would often find the control of the syndicate burdensome and would attempt to shake it off. The syndicate would then avenge itself by the foundation of an Opposition paper. It was under these circumstances that a syndicate of booksellers founded the *British Press*, a morning paper, in opposition to the *Morning Post*, and the *Globe*, an evening paper, in opposition to the *Courier*.<sup>2</sup> But even when the syndicate maintained its control over the editor, his very dependence on the syndicate emanci-

<sup>1</sup> Smiles, *Life of Murray*, vol. ii. pp. 180 sqq. Cf. Moneypenny, *Life of Disraeli*, vol. i. pp. 81 sqq.

<sup>2</sup> F. K. Hunt, *The Fourth Estate*, vol. ii. pp. 90 sqq. Cf. H. of C., April 27, 1809 (*Parl. Deb.*, vol. xiv. p. 267).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

pated him from the control which political groups, the Court, the party organizations sought to exercise over him in other directions. Regarded from this point of view, the growing independence of the Press will appear as another form of the plutocracy which marks the 19th century.

The Government, feeling itself powerless to destroy the freedom of the Press, sought to utilize the newspapers for the support of its policy. What, however, could it offer the newspaper proprietor as the price of his services? A pecuniary bribe was out of the question. The advertisements brought far more than the Government was in a position to offer and were paying better every day. Moreover, the wider the circulation of the paper, the more profitable were the advertisements, and to attract the public the paper must bow not to the orders of the Cabinet, but to the popular taste. In 1815 the proprietor of the *Times* would not have agreed, as his father had agreed twenty years earlier, to support the policy of the Government in return for a pension of £600. Nor was it of any use for the Government to offer official announcements. On the contrary, the Government had more need of the papers to publish its announcements than they of the Government. Nor had it news to offer. The time was gone by when the Government was better informed of passing events than the Press. Although the proprietors of the London papers did not as yet employ regular correspondents stationed permanently in the great capitals of the world, or attached, almost officially, to the staff of warring armies, it was nevertheless common knowledge that they were prepared to pay handsomely for news brought secretly from Continental ports. They made a skilful use of private correspondence. They had devised a host of methods by which the British Press had become a focus for the rumours of Europe. The Government had indeed attempted, as a last resource, to intercept the couriers employed by the newspapers, and to oblige the Press to purchase as a favour the services of the official post. But these attempts had failed. Five years of conflict with the *Times* had resulted in the victory of that paper, which had foiled the tricks and illegal practices of the Government.<sup>1</sup>

<sup>1</sup> *The Times*, February 11, 1807. Grant, *Newspaper Press*, vol. i. pp. 436 sqq. For the relations between the proprietor of

## POLITICAL INSTITUTIONS

On the whole, then, it would appear that the accusations of servility and venality brought by the Opposition organs against the papers supporting the Government credited the Government with much more influence than in reality it possessed. Even the ministerial organs depended rather on the public than on the Cabinet. In 1809 the *Courier* had turned against the Government in the matter of the Duke of York. In 1814 and 1815 all the Government papers deserted the Ministry on the questions of the Property Tax and the Corn Bill. "No paper that has any character," Lord Liverpool wrote to Lord Castlereagh, "and consequently an established sale, will accept money from Government; and indeed their profits are so enormous in all critical times, when their support is the most necessary, that no pecuniary assistance that Government could offer would really be worth their acceptance. . . . The truth is, they look only to their sale. They make their way like sycophants with the public, by finding out the prejudices and prepossessions of the moment, and then flattering them; and the number of *soi-disant* Government or Opposition papers abound just as the Government is generally popular or unpopular."<sup>1</sup>

In the House of Commons Windham was wont to defend the thesis that the British Constitution would be altered, and that England would become a democracy if the newspapers were free to report and to criticize at their pleasure the parliamentary debates. His contention was not altogether unfounded. In the 18th century writers on Constitutional Law had been accustomed to discuss the problem whether or no democracy were practicable in a large State, and whether it was possible to conceive of democracies of a different type from those which had obtained in the city States of the ancient world, and which were being held up by Rousseau as a model for modern imitation. When the United States of America had been founded, it was thought that the solution of the problem had been furnished by federalism, and that it was possible to construct a large

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*The Times* and the Government, see also *Croker Papers*, vol. i. pp. 36 sqq.

<sup>1</sup> *Letters and Memoirs of Lord Castlereagh*, vol. xi. pp. 16-17, Lord Liverpool to Lord Castlereagh, September, 5, 1815.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

democratic State by the federation of a number of petty republics; but the new development taken by the political Press had rendered federalism unnecessary. Thanks to the progress of printing, and the improvement of the means of transport, it had become possible for the parliamentary orator, for the editor of a leading newspaper, daily to lay his view of the political events of the day before every citizen of a great nation. And in this way the newspaper editors performed the part played by the demagogue in the petty republics of antiquity. Naturally the effect produced by the newspaper politician was less immediate and did not provoke so violent a response as the speech of a demagogue. The scattered readers of a newspaper were a public, not a mob. There was, however, exactly the same sensationalism, the same appeal to the emotions of the multitude. Thus has the modern newspaper reduced the dimensions of an entire country to those of an ancient agora or forum.

### PARLIAMENT AND PUBLIC OPINION. THE STATE OF PARTIES IN 1815

#### *The Parliamentary Parties Discredited.*

We have seen that rebellion, or the menace of rebellion, or milder forms of rebellion, popular demonstrations, public meetings, general petitions, political associations, newspapers, were weapons employed by the Englishman as his traditional right for the defence of his liberty. But the very necessity for their employment is proof that the Constitution, understood in the strict sense of the term, was an insufficient safeguard. According to the theory of the Constitution, which regarded it as a mixture in three equal parts of three distinct principles the House of Commons, as opposed to the Crown and the Upper House, represented the democratic principle. But the guarantees which the people should have found in the House of Commons for the security of their liberty and interests, they were, in fact, obliged to seek elsewhere against the House of Commons itself. That is to say, the interests of the Crown and those of both Houses of Parliament had now become

## POLITICAL INSTITUTIONS

identical. No longer did a conflict of interests render each a check upon the two others, securing thus a balance of political forces. The Constitution had been stultified.

This was the belief of all who demanded "a reform of Parliament," and of those especially who wished this reform to be "radical," and who were therefore shortly to receive the nickname of "radicals."<sup>1</sup> In their opinion, the House of Commons could never represent truly the will of the people, could never perform the function assigned to it by the Constitution, until it was elected by all the taxpayers or even by all adult males without exception. William Cobbett, a former anti-Jacobin writer who had broken with the Tories, was the journalistic exponent of the new group. Sunday by Sunday, in his *Register*, he fulminated wholesale denunciations of the self-seeking and absence of political conscience displayed equally by both the great parliamentary parties. Henry Hunt, "the man with the white hat," a violent demagogue, Major Cartwright, an old dotard termed in mockery the "mother of parliamentary reform,"<sup>2</sup> founded societies to carry on the propaganda and addressed public meetings. The group began to display its activity during the general elections of 1806 and 1807. In 1809 Sir Francis Burdett, Member for Westminster, brought forward a motion in favour of the extension of the franchise to all taxpayers. The same year the party gained a more important adherent in the person of Bentham. He had been known previously in England as a prison reformer, on the Continent as a penologist. His political opinions had been conservative and sceptical. His *Catechism of Parliamentary Reform*, which appeared in 1810, announced his conversion to the cause of radical reform. He now became the philosopher of the party. Near him at Westminster lived his secretary, James Mill, who recruited for Bentham the intellectual youth of the nation. Francis Place meanwhile was organizing the electors. It was in truth a motley group, and counted but a small number of adherents. Its prestige was due to the fact that it brought forward with untiring zeal arguments in

<sup>1</sup> For the origin of the term, see our *Formation du Radicalisme philosophique*, vol. ii. pp. 206-7.

<sup>2</sup> *Memoirs, Journal and Correspondence of Thomas Moore*, September 7, 1818 (vol. ii. p. 157).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

justification of the growing feeling of dissatisfaction with the parliamentary machine which had been felt for some years past by the British public.

Pitt and Fox were both in their graves, and no first-rate statesman was left in Parliament. The English—not merely those who were eager for reform and took a keen interest in politics, but the indifferent and fickle masses—were disgusted by the mediocrity of their politicians. Democratic orators and publicists but echoed their own secret suspicions, when they called the leaders of both parties to account for the courtesy and consideration with which they treated their opponents. What, they asked, was the meaning of this courtesy, of this consideration, if the two parties really stood for ideas, were radically divided from each other by a difference of principle? But in reality the two parties did not represent ideas. They were merely two rival factions disputing the possession of power, the ins and the outs; and since the outs knew that some day or other the turn of the political wheel would put them into office, they were very guarded in their attacks on abuses by which sooner or later they would themselves profit. And, again, why did every Member of Parliament defend so obstinately the antiquated constitutional dogma which taught that immediately on his election he became independent of his constituents, and that the House of Commons would be no longer a free and deliberative assembly, if the members took orders from those who had sent them to Parliament?<sup>1</sup> Nor was this thesis maintained only by the Tories. Romilly, the typical Whig theorist, and an advocate of administrative and parliamentary reform, had made it a point of honour for the past three years not to enter into any engagement with the Bristol electorate to

<sup>1</sup> See the speeches of Lord North and of Jenkinson (the future Lord Liverpool), given in Jephson, *The Platform*, vol. i. pp. 149, 207. Cf. H. of C., February 20, 1815, Vansittart's speech: "He could not conceive any such thing as a contract between the Commons in Parliament assembled, and the Commons at large, by which the former stipulated that they would not, under any circumstances, resort to a particular measure. Whatever might be the situation of Parliament, they could not enter into a contract or bargain with the subjects of the realm at large, whose representatives they were, and whose interests were identified with their own" (*Parl. Deb.*, vol. xxix. p. 854).

## POLITICAL INSTITUTIONS

support either of these reforms.<sup>1</sup> It is not surprising that the electors would have none of him and that the democrats were committed to an implacable feud with this Liberal pedant. More recently, in the course of the debates on the Corn Bill, Western had actually boasted of his indifference to the opinion of his constituents; and William Smith even thought it necessary to apologize for deferring to the opinion of his constituency.<sup>2</sup> Nevertheless, the radical reformers were not justified in ascribing this divorce between Parliament and public opinion wholly to the defective franchise. We should be forming altogether too high an estimate of the value of democratic institutions, did we believe that the adoption of manhood suffrage or of any other very broad franchise would of itself secure immediately an absolute identity of interest and a complete harmony of sentiment between the electorate and their representatives. Moreover, the unpopularity of the Commons, of the parties who composed it, of the statesmen who led it, was but a recent and a passing phenomenon. The days of Pitt were not long past, the days of Canning were in the near future. We must take a sufficiently long period into consideration, if we would form a just estimate of the working of the British Parliament during the latter half of the reign of George III, an estimate which will, indeed, account for the temporary discredit into which both parties had fallen, but will not fail to recognize that all the while both parties had been laying insensibly the foundations of the future democracy.

### *The Whigs. The Policy of a Self-seeking Faction.*

We will study first the Whig Opposition, now become so weak and so unpopular. How shall we account for the

<sup>1</sup> *Memoirs*, vol. iii. pp. 23 sqq.: "The merit" (of my speech) "consisted more in what I omitted than in what I said. I touched upon no topics calculated to court popular favour. I said nothing of a reform of Parliament, of pensions, of sinecures, of economy in the public expenditure, of peace, or of any other of the subjects which are at the present moment generally so favourably received in public assemblies." Of what, then, did he speak?

<sup>2</sup> H. of C., March 6, 1815 (*Parl. Deb.*, vol. xxx. pp. 24, 27).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

profound discredit into which had fallen the party once the incarnation of the soul of England? The Whigs had not really been vanquished, as they alleged, by the gold of King George and his friends. The true cause of their downfall was that public opinion had repudiated a policy too obviously oligarchic. The downfall dated from the year 1784, the year which had witnessed a reconciliation between Fox, the bitter opponent of the American War, and Lord North, who as Prime Minister had been responsible for that war. The two statesmen, as the result of a joint intrigue, had formed a coalition Cabinet and had succeeded in obtaining a chance majority in Parliament. They fell together when they attempted by their East India Bill to subject the entire Indian empire to the control of a committee sitting in London, whose nine original members were to be the nominees of Parliament. This meant the open and direct annexation of the colonial government by the great parliamentary families. George III rebelled against the scheme, secured the rejection of the East India Bill by a small majority of the House of Lords, dismissed Fox and Lord North, and appointed as Prime Minister the youthful William Pitt, a son of Lord Chatham, who had resisted pressing solicitations to enter the coalition Cabinet, and had constituted himself the advocate in Parliament of an extensive reform of the franchise. The country declared in favour of Pitt against Fox and Lord North. In other words, the nation repudiated the Whigs the moment they ceased to represent a principle—the defence, namely, of the liberties of the people—and degenerated into a mere coalition of selfish factions. Within a few months the Whigs had lost the fruits of a century of prestige and power.<sup>1</sup>

This had been the cause of the fall of the Whigs in 1784, and still in 1815 it remained one of the causes of their

<sup>1</sup> A letter from Pitt to Addington written in 1800, proves that the popularity of Parliament as an institution was then intact. "I see nothing so likely to prevent the progress of discontent and internal mischief as what we have more than once found effectual, and cannot too much accustom the public to look up to—a speedy meeting of Parliament. Even if no important legislative measure could be taken, the result of Parliamentary inquiry and discussion would go further than anything towards quieting men's minds, and checking erroneous opinions." (Pellew, *Life of Lord Sidmouth*, vol. i. p. 264.)

## POLITICAL INSTITUTIONS

weakness. For the last fifteen years, the Tory party had been tending to split, and the Whigs had attempted to utilize the split to rally to their standard the greatest possible number of deserters and to attempt once more that policy of coalition which in 1784 had served them so ill. Even the old epithets of Whig and Tory, hallowed by tradition and implying a policy of definite principles, had fallen into disuse. Men now spoke only of the Opposition and the party in office.<sup>1</sup> The effect of these tactics upon the country at large we know already. Popular opinion regarded with the same indifference and contempt all the groups which disputed in Parliament the possession of power. Nor had the new tactics of the Whigs met with better success in the House of Commons itself. By their policy of compromise the Whigs had not captured a sufficient number of votes to compensate for their loss of popularity. On this point, at least, there existed no divergence between the House of Commons and the nation. The days of political oligarchy were past. During the first fifteen years of the new century the characteristic feature of English parliamentary life had been the decline of the system of aristocratic groups and the speedy disintegration of any such group that showed signs of formation.

Of these groups Addington's group had been the earliest. It is remarkable that the leader of this new clique did not belong to a noble family of established political importance, nor even to an old county family. He was merely the son of an eminent physician who had had the good fortune to number Lord Chatham among his patients. His sisters had made good matches, and he owed his entry into Parliament to the patronage of his brother-in-law, James Sutton. Pitt had then taken him up, had made him Speaker of the Commons, and had designated him his successor, if ever circumstances should compel his resignation. Addington found himself Prime Minister. Pitt was always willing to be his friend, provided he were content to remain the obedient

<sup>1</sup> Cobbett's *Political Register*, March 1, 1809, vol. xv. p. 355: "There are men who are in place, and others who, upon all occasions, whether right or wrong, censure the measures of Ministers, with the sole view of supplanting them. But, in any other sense, the word party has now no more meaning than has the word *Tory*, which no man has any longer the impudence to use."

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

agent of his policy, ready to re-enter the ranks, should his patron ever take it into his head to return to office. Addington, however, had come to believe in his own greatness; and since the conclusion of the Treaty of Amiens the Foxites flattered his vanity by their laudation of his policy of peace. When hostilities broke out afresh, Pitt tried in vain to resume the direction of affairs. He failed to win Addington's consent by the offer of an important post in his Cabinet. Whereupon, yielding to the solicitations of his friends, he led a direct attack upon the Cabinet and rendered its existence so precarious that Addington was compelled to resign. Nevertheless, Pitt's former lieutenant was now in command of an independent group. He was followed by a small company, numbering in all some forty or sixty members of the House of Commons, and including his brother, John Hiley Addington, his brother-in-law James Adams, Lord Hobart, Bond, Bathurst, Vansittart, and Lord Powis.<sup>1</sup> It was in vain that Pitt effected a reconciliation with Addington and gave him a seat in his Cabinet with the title of Lord Sidmouth. Addington knew perfectly well that his credit with the King stood as high as that of the Prime Minister.<sup>2</sup> And by his unbending Toryism he had made himself popular with the country gentlemen. He acted, therefore, just as he pleased, voted at times against Pitt, and even as a member of the Cabinet continued to behave as the leader of an independent faction.

His position in Parliament was still further strengthened, and Pitt's party rendered even weaker, by the secession of another group. Lord Grenville, who for many years had been Pitt's faithful subordinate, now came forward to advocate a "junction of all the parties," or as it was termed, "of all the talents," and the admission of Fox into the

<sup>1</sup> Sixty-eight members in 1804, according to Rose (*Diaries and Correspondence*, vol. ii. p. 119); forty-three members in 1805, according to the estimate of Abbot (*Diary of Lord Colchester*, June 12, 1805, vol. ii. p. 9). For the composition of the group, see *ibid.*, December, 1804 (vol. i. pp. 532-3). Forty to fifty members in 1806, according to Pellew (*Life of Lord Sidmouth*, vol. ii. p. 412).

<sup>2</sup> Addington's relation, Sutton, Bishop of Norwich, was appointed Archbishop of Canterbury in preference to the candidate favoured by Pitt, Prettyman, Bishop of Lincoln (Cobbett, *Political Register*, January 26th and February 16th, vol. viii. pp. 105, 246).

## POLITICAL INSTITUTIONS

Cabinet. King George, however, rejected the proposed coalition and Lord Grenville was compelled to retire. Henceforward the Opposition possessed two heads—Fox, representing the old, and Lord Grenville, representing the new, Opposition. This "co-operation," to use the expression which the allied groups loved to employ, in order to avoid the discredited term "coalition," strengthened by some thirty votes the Opposition in the Commons.<sup>1</sup> Lord Grenville, Lord Temple, Lord Nugent, and Admiral Fremantle led this new group of aristocrats. After the death of Pitt, in the early days of 1806, the King resigned himself to accept a Cabinet formed by the alliance of the groups led respectively by Fox, by Lord Grenville and by Lord Sidmouth. The new Ministry failed, however, to gain the confidence of the country. Fox died in September, and the men of the "old Opposition," now led by Grey, lost their influence in the Cabinet. The Grenville faction received an accession of strength, and Lord Sidmouth's party was also strengthened.

From these groups the nation could scarcely expect a war against aristocratic privilege and administrative abuses. Moreover, in the February of 1807 the King quarrelled with his Ministers on the question of Catholic emancipation. The Cabinet resigned, and the orthodox disciples of Pitt returned to power. Once more the policy of coalition had brought disaster upon the Whigs.

Nevertheless, the disintegration of the party in office still continued. In 1809 Canning, Foreign Secretary in the Duke of Portland's Cabinet, provoked by his intemperate ambition a Cabinet crisis. Although the son of an actress, a political pamphleteer of no particular standing, and without noble connexions of any kind, he had entertained since Pitt's death the dream of taking his place as the great national statesman. In his impatience to attain the first rank he engineered an intrigue against his colleague, Lord Castlereagh, the Secretary for War. Lord Castlereagh, who, like Canning, was an orthodox disciple of Pitt, had planned a disembarkation of English troops on the island of Walcheren. Canning immediately took exception both to the

<sup>1</sup> Thirty-four votes in 1803 (Pellew, *Life of Lord Sidmouth*, vol. ii. pp. 141-2); twenty-three votes in 1804 (Rose, *Diaries and Correspondence*, vol. ii. p. 119).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

general idea and the detailed plan of the expedition. He told the Duke of Portland that he did not wish to form part of a Cabinet containing the organizer of this disastrous campaign, and he obtained from the weakness of his chief a secret promise to compel the resignation of Lord Castlereagh, as soon as the expedition had been concluded and the folly of the scheme demonstrated. Perhaps the plot would have succeeded if Lord Castlereagh had not discovered it. Then England presented to the astonished gaze of Europe the spectacle of a duel between the Foreign Secretary and the Secretary for War. The Cabinet could not survive so grave a scandal, and resigned *en bloc*. Perceval then reconstructed a Tory Cabinet in which neither Canning nor Lord Castlereagh found a place. Canning, at once the most ambitious and the most eloquent of the members of the Lower House, was henceforward the leader of a new group, united not by the influence of a noble family, but by the personal genius of its leader. The group comprised some fifteen members of the House of Commons.<sup>1</sup> Among these were Sturge Bourne, Robert Smith, James William Ward, and, most important of all, Huskisson, a man, to be sure, of obscure origin—a retired banker according to some, a retired chemist according to others—but a great financier whose merit had already won the recognition of Pitt.

In 1812 occurred a further split, whose effect was to strengthen the Canning group. The Marquis of Wellesley, Canning's successor at the Foreign Office, resigned, alleging as his reason for the step "that he had not the weight in the Government which he expected when he accepted office."<sup>2</sup> Inspired by the memory of his vice-royalty of India, and the victories now being won in Spain and Portugal by his brother Wellington, the ambition of the Marquis knew no bounds. His "connexion," an aristocratic "connexion" of the old style,<sup>3</sup> entered into close relations with the group led by Canning. What, then, was there to prevent the two

<sup>1</sup> Twelve in September 1812 (*Court of England under the Prince Regent*, vol. i. pp. 404-5).

<sup>2</sup> Lord Liverpool to Wellington, February 1812 (Yonge, *Life of Lord Liverpool*, vol. i. pp. 377-8).

<sup>3</sup> Eleven members in September 1812 (*Court of England under the Prince Regent*, vol. i. pp. 404-5); seventeen members in November after the general election (*ibid.*, vol. i. p. 411).

## POLITICAL INSTITUTIONS

statesmen from undertaking the leadership of a new Cabinet—the former in the Lords, the latter in the Commons? Such a Cabinet would surely enjoy a prestige to which Perceval's Ministry of dullards could never aspire. The proposed Cabinet, was, if possible, to consist only of Tories. If necessary, however, the co-operation of the Whigs was to be invited; for the Whigs possessed no candidate whom they could seriously put forward in opposition to Canning as the representative of the Government in the House of Commons. Wellesley and Canning also counted on the support of the Prince Regent, for the Marquis was his intimate friend. Moreover, the Regent possessed devoted servants among the Whigs—Lord Moira in the Lords, Sheridan in the Commons. Never had the coalition of groups which constituted the Opposition been stronger than in these opening months of 1812. When Perceval was assassinated in May, the House demanded by a majority of four a radical alteration of the Government policy.<sup>1</sup> But although everything appeared to conspire to the triumph of the Opposition, it continued to suffer from the same defects of internal organization. It was, after all, only a coalition of groups and the day of groups was over.

The Prince Regent proved false. He took advantage of the differences of opinion which manifested themselves between the leaders of the coalition to procure the failure of the negotiations. Lord Grey and Lord Grenville were in favour of a policy as pacific as circumstances would permit; Wellesley and Canning, on the other hand, were denouncing the slackness with which the Tories were carrying on the war. The two groups were unable to agree upon a common foreign policy, and the Regent formed a strictly Tory Cabinet. Lord Liverpool was Prime Minister, Lord Castlereagh Foreign Secretary. Lord Sidmouth's group was bought with the most important posts in the Government, and was henceforth merged in the main body of orthodox Toryism.<sup>2</sup> Wellington meanwhile entered Madrid, and

<sup>1</sup> H. of C., May 21, 1812 (*Parl. Deb.*, vol. xxiii. p. 249).

<sup>2</sup> For several years past Lord Sidmouth had been paving the way for his reunion with the Tories. Immediately after the downfall of the Ministry of all the talents, he had expressly reasserted his independence of the groups of Grey and Grenville (Pellew, *Life of Lord Sidmouth*, vol. ii. p. 470, letter to Lord Dunstanville,

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Napoleon retreated from Moscow. The despairing forecasts of Grey and Grenville, for whom victory over Napoleon was an absolute impossibility, were thus refuted; as was also the contention of Wellesley and Canning, that victory could never be obtained until they were permitted to infuse fresh vigour into the prosecution of the war. Lord Liverpool seized his opportunity, dissolved Parliament in September and strengthened his majority. The disintegration of the Tories was suddenly arrested, and it was now the Opposition that fell to pieces.

Canning realized his impotence. The great families which composed the Whig aristocracy had always regarded him as a dangerous upstart, the orthodox disciples of Pitt were irretrievably committed against him. Even before the election of 1812 Wellesley and Canning had entered into negotiations with the Cabinet.<sup>1</sup> After the election their position was worse than ever. Disavowed by Wellington,<sup>2</sup> Wellesley abandoned the ambitions of the past two years. Never might he hope to be Prime Minister. Indeed, he no longer possessed even a following in Parliament. In 1813 Canning flatly refused an offer to become the recognized Leader of the Opposition in the House of Commons.<sup>3</sup> The following year he solemnly discharged his group of supporters, and declared his followers free to act and vote according to their individual judgment. His brother, Stratford Canning, accepted from the Government a special

April 5, 1807), and had given to his own group the distinctive feature of theoretic conservatism. ("The doctrinal party," Canning termed them.—*Diary of Lord Colchester*, May 11, 1809, vol. ii. p. 185.) In 1809 he permitted his client, Lord Bathurst, to enter Perceval's Cabinet. He now secured for himself and his friends in Lord Liverpool's Cabinet the Home Office, the War Office, the Board of Trade, the Exchequer, and the India Office.

<sup>1</sup> Who took the initiative in these negotiations? Who was responsible for breaking them off? Our accounts conflict. See Twiss, *Life of Lord Eldon*, vol. ii. pp. 211-12; *Court of England under the Prince Regent*, vol. i. pp. 404-5; *Life of Wilberforce*, vol. iv. pp. 37 sqq. See also the *Morning Chronicle* of September 26, 1812, for the current rumours about the negotiations and their failure. See also Wellesley Pole's address to the freeholders of Queen's County, to be found in the *Morning Chronicle* of October 26, 1812.

<sup>2</sup> *Court of England under the Prince Regent*, vol. i. p. 411.

<sup>3</sup> *Diary of Lord Colchester*, February 30, 1813.

## POLITICAL INSTITUTIONS

diplomatic mission to the Swiss cantons; Thomas Sydenham, a former member of Wellesley's group, accepted a similar mission to the Court of Lisbon; Wellesley Pole became Director of the Mint. To furnish Huskisson with a place in the Cabinet, the new post of Chief Commissioner of Woods and Forests and Land Revenues was created expressly for him. Canning himself accepted from Lord Castlereagh a splendid and purposeless mission to the Court of Portugal. "It was like the last lottery," exclaimed Tierney, "where there were no blanks, but all prizes."<sup>1</sup> But in reality Canning, like Wellesley, had failed. Had he but served his party faithfully, the superiority of his personal merit would have given him in due time the uncontested leadership. And if his ambition had not led him into intrigues which strengthened the position of their intended victim, perhaps Lord Castlereagh, instead of being the arbiter of European politics, would have buried his political reputation in Walcheren.

Thus of all the groups which had successively seceded from the Tory ranks since the beginning of the century, one alone, Lord Grenville's group, still remained faithful to the Opposition; but its self-seeking and greed rendered it wholly unreliable. In 1813 the Grenvilles had already begun to detach themselves from active politics, leaving their clients, Fremantle, Wynne, Horner, and Plunkett, the Irishman, to uphold their standards in the field of debate. And they would shortly betray their followers. After their departure what elements, or rather what remnants, were left to compose the Opposition in Parliament? "A few Whig families," Mackintosh told Thomas Moore in 1819, "are our only security for the Constitution."<sup>2</sup>

<sup>1</sup> H. of C., November 15, 1814 (*Parl. Deb.* vol. xxix, p. 218). For the discharge of Canning's group, see *Court of England under the Prince Regent*, vol. ii. pp. 36-7: Francis Horner to Lord Grenville, July 22, 1813. *Letters to Ivy*, pp. 213, 216. *Creevy Papers*, vol. i. p. 151.

<sup>2</sup> *Memoirs, Journal and Correspondence of Thomas Moore* (May 30, 1819, vol. ii. p. 316). It is possible to reconstruct the list of the Whig remnant by means of the debates on the Six Acts of 1817. See particularly the list of the ninety-eight members who voted against the Habeas Corpus Suspension Bill at its First Reading on February 26, 1817 (*Parl. Deb.*, vol. xxxv. pp. 758-9). But on that occasion only 371 members voted. The list may be completed from other divisions. See particularly the division

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

In the foremost rank were the great families of the Revolution—the Percys, the Cavendishes, the Russells, the Howards. The Duke of Bedford, head of the Russell family and owner of immense estates in Bedfordshire, in Devonshire and in the heart of London, was an influential politician. Samuel Whitbread, the democrat, was his intimate friend. His eldest son, the Marquis of Tavistock, took an active part in the debates in the House of Commons. But of his three other sons, one, Lord George, was on active service; another, Lord William, was plunged so deeply in debt that he dared not show his face at Westminster; and the third, Lord John, who was hereafter to confer such honour on the family, had scarcely attained his majority and entered Parliament. The glory of the family had been under eclipse since the death in 1802 of the fifth Duke of Bedford, a great agriculturalist, who had taken part in public life and had been honoured by the invective of Burke and a funeral panegyric by Fox. Alone among the heads of noble families, Charles Howard, Duke of Norfolk, who died in 1815, had preserved throughout all the long years of the war the great political traditions of the old English aristocracy. His love of racing was so intense that he was commonly nicknamed the “Jockey.” Boon companion of the Prince of Wales, a hard drinker, a gambler, proverbially dirty and untidy, but a man of culture and a splendid conversationalist, he had been deprived by Pitt of his Lord-Lieutenancy for having toasted at a public banquet “Our Sovereign, the People.” An ardent politician, around his Sussex castle at Arundel he had enlarged his electoral fief. At Hereford, Gloucester and Carlisle he led the popular party. In Gloucestershire in 1811, alone of all the local aristocracy, he had supported, and supported successfully, an independent candidate. He gave Romilly a seat, when he had failed to secure his election at Bristol. Among his clients was Creevey, the democrat. The Duke of Norfolk was indeed the typical Whig, an aristocratic republican, who passed his entire life provoking by his insolence the pride of King and Ministers.

Other families grouped themselves around these great

of March 14th on the Seditious Meetings Bill, where eight new names appear; and that of March 28th, where we find eight further names (*Parl. Deb.*, vol. xxxv, pp. 1131, 1302).

## POLITICAL INSTITUTIONS

houses. George Ponsonby, chosen in 1808 as Leader of the Opposition in the Commons in preference to the irresolute Tierney and the violent Whitbread, represented one of the three great families who disputed the empire of rural Ireland. The Ponsonbys were allies of the Fitzwilliams, a powerful Yorkshire family; and Lord Fitzwilliam's son, Lord Milton, was in 1815 among the hopes of the Whig party. In the Upper House the Opposition was led by Lord Grey in conjunction with Lord Grenville. Lord Grosvenor and Lord Folkestone played a very active part in politics—the former in the Lords, the latter in the Commons. But there is no need to enumerate all the Whig families who together marshalled 100 or 130 members of the House of Commons. We need only mention two noble families whose intellectual and literary activities surpassed even their political action, and who occupied a place apart in the ranks of the Opposition.

The prestige of Lansdowne House was due to Lord Shelburne, first Marquis of Lansdowne, the friend of Adam Smith, a patron of Bentham, a correspondent of the French encyclopædists. His second son, now heir to the title, had made a brilliant appearance in the House of Commons. When he passed to the Upper House he fell into the background of political life; but this rendered it all the easier for him to continue the traditions of his father both in London and at Bowood. Mackintosh, Romilly, Dumont of Geneva, and Madame de Staël gathered under his roof. Nevertheless, Lansdowne House was in its decline. Holland House, on the contrary, was at the height of its fame. It was there that Fox had died in 1806 in the presence of his nephew and niece, Lord and Lady Holland. Lord Holland was an ardent Whig and a clever politician. Lady Holland was the deity of the shrine. Although neither a beauty nor a woman of high intellectual gifts, she was a born ruler. Owing to the irregular circumstances of her marriage with Lord Holland she was not received at the strict court of George III. She took her revenge by establishing a court of her own, by opening a *salon*, where she received, commanded and bullied every Englishman of eminence in the Opposition ranks—men of letters, philosophers and publicists. Lord Holland and his wife were too independent not to make many enemies. They were charged with an affectation of

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

cosmopolitanism, and their zeal for the cause of Spanish independence offended the advocates of peace at any price.<sup>1</sup> Both Lansdowne House and Holland House regarded the great Opposition review, the *Edinburgh Review*, as their appanage. Thus the two houses kept the Whig aristocracy in touch with the thought of the day, and prevented the Whigs from degenerating into a group of great country families. This was no slight service.

Lord Grenville, commenting in the July of 1813 on the dissolution of the Canning group, expressed himself in the following terms: "What I most lament in it is the discredit which it throws on all party connexion, the upholding which, on its true foundation of public principle, I take to be essential to the benefit of a parliamentary Constitution. The mere fact of a party being thus dissolved shows abundantly it could exist to no good purpose."<sup>2</sup> What, however, did Lord Grenville understand by this party system which he regarded as the very essence of parliamentary government? Did he mean that in every free country parties would necessarily be formed divided from each other either by philosophic or religious tenets or by the economic interests of their members? If so he merely stated a truism; though, of course, the spirit of party might overpass the limits essential for the maintenance of national unity, and party strife degenerate into a civil war in which the combatants, though members of the same social organism, no longer recognized any common principles of political conduct. But Lord Grenville meant perhaps to endorse Burke's doctrine that the contending parties, if they were not to become two hostile societies, two nations in one, must entrust the care of their interests, sentiments and convictions to an oligarchy of noble families, who, because they belonged to the same class, would be able to observe in their warfare a rigorous code of behaviour, and would obey common principles. The great work to be achieved by English politics in the 19th century would indeed be the perpetuation of

<sup>1</sup> In Spain a political party had been formed which bore the novel designation of "Liberal." It was perhaps through the channel of Holland House that the term found its way into the political vocabulary of England.

<sup>2</sup> *Court of England under the Prince Regent*, vol. ii. p. 38. Lord Grenville to Francis Horner, July 25, 1813.

## POLITICAL INSTITUTIONS

parliamentary aristocracy. Such a feat, however, could only be accomplished by a constant and careful adaptation of this aristocratic policy to the changing needs of a society which was becoming industrial and democratic. During the first years of the 19th century, however, the mass of the population found this process of adaptation too slow. The nation regarded the intrigue of Lord Wellesley and Canning as a survival of the system of oligarchic groups. Nor was Burke's interpretation of the system accepted by public opinion. For the past thirty years the parties had been regarded not as patriarchal groups, fixed immovably in their ancestral principles, but as shifting cliques, the offspring of intrigue, and formed to exploit the emoluments of office. The memory of the coalition of 1784 hung heavily, as was indeed simple justice, over the repeated attempts of the Opposition to get together a majority in Parliament hostile to the Tories. The party in office was a homogeneous whole, the Opposition a federation of independent groups. Viewed from this standpoint it is intelligible that the victory of the Tories, supported, as it was, by the opinion of the country, was favourable to the progress of political morality.

### *The Whigs and Political Reform.*

Nevertheless, extenuating circumstances may be pleaded in favour of the Opposition. Never during the past half-century of adverse fortune had the party, as its accusers alleged, wholly betrayed the cause of reform. Even the partial betrayal of which it was in fact guilty, was only too often due to the knowledge that it lacked the support of the country.

During the opening years of the reign prior to the disastrous coalition of 1784, the Whigs had relied on the people to support their resistance to King George. The legislation of the period witnesses to the energy with which, when in office, they had themselves initiated reforms, and when in Opposition had successfully put pressure on their opponents to yield to their demands. We have already seen how the English Government undertook the reform of the administration, and regulated the exercise of the Royal Prerogative

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

of pensions, reducing thus the means of parliamentary corruption at the disposal of the Crown. At the same time a beginning was made with the reform of the franchise. The Grenville Act of 1770<sup>1</sup> limited the right claimed by the majority of the House of Commons to decide contested returns at their arbitrary pleasure. The new Act referred the hearing of election petitions to a select committee chosen by lot. Another Act, passed in 1782, forbade Government contractors to sit in the House, especially contractors to the War Office and the Admiralty.<sup>2</sup> And simultaneously the composition of the electorate was modified. Statutes were passed restricting the franchise, which would reduce the influence of the Crown and the *nouveaux riches*. An Act of 1782 deprived tax collectors and Customs officers of the vote.<sup>3</sup> An Act of 1763 provided that honorary free-holders might not exercise the borough franchise unless they had received the freedom at least twelve months before the election.<sup>4</sup> An Act of 1786 exacted from scot-and-lot electors a residence of at least six months to qualify for a vote.<sup>5</sup> An Act of 1788 provided that the county electors must have been on the register at least a month before they were entitled to vote.<sup>6</sup> Other Measures, on the contrary, enlarged the franchise to punish the electors of certain small boroughs who had too openly put up their votes to auction. This was done to New Shoreham in 1771, to Cricklade in 1782. Finally, in 1788, Parliament repealed a statute of 1729 which had stereotyped the franchise in each constituency, as it had been fixed by the last decision of the House of Commons.<sup>7</sup> The right to revise its former decisions was thus restored to Parliament.<sup>8</sup> The House of Commons had now at its disposal an instrument by which, if necessary, the entire franchise might be reformed piecemeal, constituency by constituency.

<sup>1</sup> 10 Geo. III, cap. 16; 11 Geo. III, cap. 42. Rendered permanent, 14 Geo. III, cap. 15. This legislation was modified by 25 Geo. III, cap. 84; 28 Geo. III, cap. 52.

<sup>2</sup> 22 Geo. III, cap. 45.

<sup>3</sup> 22 Geo. III, cap. 41.

<sup>4</sup> 3 Geo. III, cap. 15.

<sup>5</sup> 26 Geo. III, cap. 100.

<sup>6</sup> 28 Geo. III, cap. 36, 57.

<sup>7</sup> 2 Geo. II, cap. 24.

<sup>8</sup> 28 Geo. III, cap. 52, § 31.

## POLITICAL INSTITUTIONS

Great reforms, are, however, but rarely effected by a series of petty changes. Public opinion towards the close of the 18th century became too strongly democratic to be content with so slow and so complicated a procedure. Democratic republics were founded in America and in France. The doctrines now professed at Paris, such as the theories of the social contract, of the rights of man, of the sovereignty of the people, were old ideas in England. Fox, the Leader of the Opposition, recognized in the principles of 1789 the Whig principles of 1688, and advocated peace with democratic France. Among his supporters Lord Grey was devoting himself to the cause of parliamentary reform. A small number of great families, with whom rebellion was a tradition and who were ready to go any lengths rather than yield to the Court, adopted the same line of policy. Nevertheless, these "new Whigs," Jacobins as they were termed, were but a handful. Clergy, gentry, financiers, merchants, manufacturers even (except during the months of famine), the proletariat, in short all classes of society, united to oppose them. The indignation excited by the savage excesses of the French Terror produced in England by reaction an "anti-Jacobin" terror. Fear of a French invasion enlisted on behalf of the Tories the warlike and patriotic sentiments formerly exploited by the Whigs in the days of Louis XIV and Louis XV. The vast majority of the Whigs deserted the Opposition and entered the Tory ranks. In the person of Burke, a Whig became the philosopher of the counter-revolution in Europe. Evidently misfortune dogged the steps of Fox and his friends. In 1784 public opinion had repudiated them because their policy was too oligarchic; in 1792 it repudiated them because their policy was too democratic. Finally, in 1797, weary of protests which fell on deaf ears, Fox and his followers ceased even to attend the sessions of Parliament. The years pass: we approach 1815: we witness a return on the part of the Whigs to the policy of coalition. But the great Opposition families never abandoned entirely the cause of reform. In 1808 Whitbread, indignant that he had been given no place two years earlier in the Fox-Grenville Cabinet, and still more indignant that after the fall of the Ministry he had not been designated Leader of the Opposition in the

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

Commons, marshalled under his banner some fifty members, who, regardless of the political strategy adopted by their party, called loudly for peace at any price and the suppression of abuses. But the members of this group, termed sometimes the "Mountain"—men such as Lord Cochrane, Lord Folkestone, Creevy, and Peter Moore—were attached to the great aristocratic connexions.<sup>1</sup> Whitbread himself was a wealthy brewer and Grey's brother-in-law. At Bedford, which he represented, he was in alliance with the Russells and their clients. So little did the violence of his policy involve him in strife with the other Opposition groups that in 1812, when the defeat of the Tory Government was expected, he was promised the Home Office in the new Cabinet. We have already had occasion to notice the progress of administrative reform during this period, and sinecures and offices in reversion were on the eve of abolition. Even as regards the reform of the franchise, matters were not at an utter standstill.

In 1804 the borough of Aylesbury underwent the same treatment that had been meted out thirty years previously to Shoreham and Cricklade.<sup>2</sup> And in 1815 only the action of the House of Lords saved Helston from the same fate.<sup>3</sup> To be sure, two attempts to obtain an amendment of the Treating Act which would render corruption at elections more difficult, were unsuccessful.<sup>4</sup> Nevertheless, in 1809

<sup>1</sup> Of great assistance in arriving at the list of the members who, about 1815, composed the "Mountain," are the lists of the members who voted on February 29, 1808, for Whitbread's motion in favour of peace; on June 15, 1809, for Sir Francis Burdett's motion (reform of the franchise), and on June 30, 1813, that a petition in favour of a reformed franchise should be taken into consideration. The figures are respectively 58, 15 and 13 (*Parl. Deb.*, vol. x. p. 869; vol. xiv. p. 1070; vol. xxvi. p. 997). Cf. Harris, *Radical Party*, p. 112, and *Creevy Papers*, vol. i. p. 216, letter of G. Bennett to Creevy, May 31, 1815.

<sup>2</sup> 44 Geo. III, cap. 60.

<sup>3</sup> See the debates H. of C., November 8, 10, 22, 24, 26, 1813; H. of C., March 14, 1816; H. of L., May 9, 1816. (*Parl. Deb.*, vol. xxvii. pp. 49, 75, 179, 195; vol. xxxiii. pp. 296, 408).

<sup>4</sup> Election Treating Bill, passed and introduced by Tierney, H. of C., March 10, April 29, May 22, June 9, 1806 (*Parl. Deb.*, vol. vi. pp. 371, 955; vol. vii. pp. 336, 571). See on this Bill an interesting article in Cobbett's *Political Register* for April 19, 1806 (vol. ix. pp. 597 sqq.). Election Expenses Bill, H. of C.,

## POLITICAL INSTITUTIONS

an important step was taken. The affair of the Duke of York led to the revelation of another scandal, the barter, namely, of a seat in Parliament for a post in the Government service. A few days later a member, who owed his election in 1807 to the support of the Government, voted against the Government on the Duke of York scandal. Lord Castlereagh demanded and obtained his resignation, as though he had been guilty of a breach of contract. Public opinion was strongly excited, and the Whig Curwen took advantage of this favourable opportunity to secure the passage of a Bill against corruption at elections.<sup>1</sup> This statute provided that whether the bribe offered were money or a place, both the giver and the recipient should be liable to a heavy fine.

Opposition grumblers complained that this measure was doomed to remain inoperative.<sup>2</sup> Was this complaint justified? One thing at least is certain. The traffic in seats was no longer carried on openly by means of advertisements in the newspapers. There is even some contemporary evidence for the belief that the reform initiated by Curwen went deeper than this. In 1812 Romilly resigned himself to enter Parliament as the client of an aristocratic connexion, because, as he said, Curwen's Act had made it impossible for him to purchase his seat with hard cash, as he would otherwise have done.<sup>3</sup> At the same moment Lord Liverpool was deplored, in a private letter, the novel difficulties encountered by the Government in preparing elections as the result of this statute. "Mr. Curwen's Bill," he wrote to Sir William Scott, "has put an end to all money transactions between Government and the supposed proprietors of boroughs. Our friends, therefore, who look for the assistance of Government must be ready to start for open boroughs, where the general influence of Government, combined with a reasonable expense on their own part, may afford

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March 29, May 9, 16, 1814 (*Parl. Deb.*, vol. xxvii. pp. 377, 546, 888).

<sup>1</sup> 49 Geo. III, cap. 118.

<sup>2</sup> See Romilly's criticisms in *Memoirs*, vol. ii. p. 287; vol. iii. p. 34. Also those of Cobbett in *Political Register*, May 13, 1809 (vol. xv. pp. 721 sqq.).

<sup>3</sup> *Memoirs*, vol. ii. p. 72.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

them a fair chance of success."<sup>1</sup> If, nevertheless, we are still of the opinion—an opinion fully justified by the facts—that during the period with which we are dealing the efforts of the Opposition on behalf of reform were wanting both in zeal and in efficacy, extenuating circumstances may be pleaded in favour of the Whigs, and the timidity which they displayed need not be ascribed wholly to calculations of self-interest. In countries where there exists either universal or almost universal suffrage, it happens constantly that democratic parties hesitate to bring forward measures apparently demanded by the immediate interests of the masses, and this not from selfish calculation but because the measures in question are opposed to the prejudices of the people themselves. Man is not governed by interest, but by beliefs and passions ; and about 1815 the beliefs and passions prevalent among the people were favourable to the party in office.

Why, it may be asked, had not the Opposition persisted since 1809 in a unanimous demand for a reform of the franchise, and why from 1815 onwards did it fail to conduct a campaign in favour of free trade ? To ask such a question is to confuse 1809 and 1815 with 1832 and 1846. Radicalism was not yet a popular creed, and some years had yet to elapse before the small group of "radical reformers" in the metropolis could effect a junction with the crowd of workmen who were smashing looms and machinery in Lancashire and Yorkshire. When Parliament raised the duty on corn and tried to establish a monopoly of the national market in favour of the English farmers, the entire population were in arms against the measure. It was, indeed, a flagrant instance of the betrayal of the electorate by the majority in Parliament. We must not, however, forget that this movement of public opinion was extremely sudden, so sudden that both parties were taken unawares ; and the Commons took the lesson to heart and would never dare to repeat the mistake then made. Again, there were two important questions demanding solution, on which politicians were obliged to come to a definite decision, before any other question could be dealt with. The first of these was the

<sup>1</sup> Yonge, *Life of Lord Liverpool*, vol. i. p. 444, letter to Sir William Scott, September 23, 1812.

## POLITICAL INSTITUTIONS

question of the war. So long as Napoleon had been Emperor of the French, peace, however desirable, had been out of the question. Therefore the Tories, who were essentially the war party, were supported by the nation. Now that peace was restored and Napoleon vanquished, the Tories were certainly deprived of this appeal. But the other question remained, the question of Catholic emancipation. Brought forward in a most clear and definite form fifteen years earlier, it had been confronting politicians ever since; and ever since it had remained a cardinal point of difference between the two parties. All the different groups composing the Opposition—Wellesleyites, Canningites, Greyites, Grenvilleites—though they disagreed on so many points, were at one in demanding the entire emancipation of the Catholics. But until the final settlement of the question the Whigs were to be confronted in this matter with the combined opposition of the Court and the country at large. The year 1829, when the Whigs were at length to gain the support of the nation on this important issue, and when, therefore, Catholics would be admitted to Parliament and to the public service, would prove fatal to the old Tory Party. For the moment, however, the Tories did not owe their majority solely to the exercise of pressure on Government officials or to bribes of money and place. It was with the No Popery cry that they intimidated the Opposition and secured, together with the confidence of the Regent, the support of the electorate and of public opinion.

These, then, were the causes whose operation maintained in power the small group of mediocrities who at this period shaped the policy of the country. On a host of questions, whose solution was daily more urgent, the country was growing ever more and more dissatisfied with the party in office, but on two fundamental questions it remained the popular party. Moreover, although in 1815 the Ministers were men of indifferent ability and personally unpopular, they were, nevertheless, the heirs of a great statesman and still profited by the prestige attaching to his name. Personally they were narrow-minded reactionaries. But in 1784 William Pitt had succeeded in infusing fresh life into the party, because he had been able to make it for a time the popular party and he had strengthened the Crown and the established

A HISTORY OF THE ENGLISH PEOPLE IN 1815  
institutions of the realm by imparting indirectly to both  
a more democratic character.

*The Tory Policy and the Inheritance of Pitt.*

Pitt's first step, when chosen by King George to succeed Lord North as Prime Minister, had been to dissolve Parliament and to make, as he termed it, "an appeal to the people,"<sup>1</sup> who were thus called upon to decide between the policy of the Crown and that of the great aristocratic connexions. Twice already, in 1774 and in 1780, the King and his Ministers had dissolved Parliament in defiance of custom before the period had expired for which it had been elected. But on both these occasions the Government had possessed a majority in the Parliament thus dissolved. Now, however, the innovation was made of dissolving a Parliament where the majority was opposed to the policy of the Government that dissolved it. Henceforward dissolution under these circumstances became customary. Between 1784 and 1815 no Parliament lasted longer than six years out of the seven for which it was legally entitled to continue. The Parliament elected in 1802 was dissolved four years later, this time by a Coalition Ministry of Whigs. The Parliament of 1806 lasted only a few months, and that of 1807 was dissolved at the end of five years. Dissolution after an important Government defeat was indeed destined to become, during the 19th century, a maxim of the Constitution. Nevertheless, towards the close of the 18th century the use made by George III of this novel procedure gave rise to complaints. Suppose, it was urged, an executive able to exert sufficient pressure on the country to secure a strong and obedient majority in the new Parliament, suppose also a servile but influential body of officials and a narrow and venal electorate. Under such circumstances was there not a considerable danger

<sup>1</sup> See the Speech from the Throne, May 19, 1784: "I have the greatest satisfaction in meeting you in Parliament at this time after recurring, in so important a moment, to the sense of the people" (*Parl. Hist.*, vol. xxiv. p. 804). Pitt's speech, April 21, 1800: "There may be occasions, but they will ever be few, when an appeal to the people is the just mode of proceeding on important subjects" (*Parl. Hist.*, vol. xxxv. pp. 83-4).

## POLITICAL INSTITUTIONS

that the pretended "appeal to the people" would be no more than an instrument with which the Government enforced its will? Nor was it, it would be added, necessary to imagine conditions so unfavourable to realize the evils which might result from the practice of dissolution. Even if the result of a general election did truly represent the will of the people, and even if at the actual moment of election the will of the people was at one with the will of the Ministry on the particular question then before the public, it would be easy for a clever statesman to watch his opportunity, dissolve, obtain a majority and thenceforward govern the country, with or without public support, till the legal duration of Parliament had expired.<sup>1</sup> These observations were well founded; but it is nevertheless undeniable that the adoption of this method by George III and his Ministers towards the close of the 18th century marks a democratic development of parliamentary government.

As we have seen already, according to the accepted constitutional theory, the representatives returned every seven years constituted from the moment of election "the legal country." On every question which presented itself while their mandate lasted, their votes were to be determined not by the wishes of their constituents but by their own judgment. This fiction of a Parliament independent of public opinion during the interval between elections was undoubtedly minimized, as we have already seen, by the exercise of the rights of meeting and association, and by the freedom of the Press. It was, moreover, expressly contradicted by the practice of dissolution. The moment a Prime Minister,

<sup>1</sup> See H. of C., April 20, 1809 (*Parl. Deb.*, vol. xiv. pp. 116, 120). Creevy maintained that "to talk of a dissolution of Parliament as an 'appeal to the people' was mere mockery and imposition. . . . (It was) not an appeal to the people but to the Treasury." Whitbread thus qualified Creevy's contention: "He believed the Treasury did possess a most preponderating influence, but at the same time he knew that the people had a voice which would be used. The infringement, therefore, of the elective right of the people was not so great, if they were not first driven mad and then appealed to; if they were not first driven into a state of frenzy and then desired to make use of their senses." For an exposition of the Whig objections to the practice of dissolution, see *Edinburgh Review*, November, 1812, No. 40, Art. 8, *Rights and Duties of the People* (vol. xx. pp. 405 sqq.).

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

who was opposed to a Measure approved by the majority in Parliament—as, for example, the India Bill of 1784 and Catholic Emancipation in 1807—appealed to the judgment of the country, he recognized that the electors had the right, indeed the duty, to exercise a constant control not only over the choice but also over the votes of their representatives. George III went even further. He called upon the country to decide between the policy which he personally favoured and the policy of the majority in Parliament. By this step the fiction of royal irresponsibility was greatly diminished. The policy adopted by the Tories during the closing years of the 18th century transformed the constitutional monarchy into a popular monarchy, in which the King assumed the power to resort at pleasure to a species of plebiscite. In 1784 and in 1807 the result of the plebiscite had been favourable to the Crown. Sometimes the parliamentary majority yielded to the demands of the Sovereign to save him the necessity of dissolving Parliament, and provoking a constitutional crisis when the country was passing through a period of stress and danger. Thus in 1800 Pitt's party had yielded, with Pitt's consent, on the question of Catholic emancipation.

Nor was it only by making Parliament more closely dependent upon the electorate that the action of Toryism in this reign had been of a revolutionary character. Its action in modifying the composition of the Commons and the Lords had been even more revolutionary.

Since 1792 fear of Jacobinism had driven a certain number of noble families into alliance with the Court. The Dukes of Portland, Newcastle and Rutland supported the royal policy, and thus counter-balanced the influence of the Dukes of Bedford, Norfolk and Devonshire. Nevertheless, when George III first ascended the throne, he could scarcely have counted on disunion among the great families to overcome their opposition. Even the Tory gentry of the provinces were not sufficiently pliable to be always subservient to his wishes. He turned accordingly to the *nouveaux riches*, who wished to improve their social position by a seat in Parliament. These he found prepared, as the price of his favours, to play the Tory on every occasion. The most zealous members of the party, now known as the party

## POLITICAL INSTITUTIONS

of the King's friends, were the nabobs, adventurers who, having made their fortunes in India, had returned home to enjoy the fruits of commercial or administrative robbery. Warren Hastings was the typical representative of this class, and his great accuser, Burke, who represented Whig aristocracy, probably detested in Hastings not so much the oppressor of the Hindus as the agent of the Tories. When in 1784 Pitt became head of the Government, he but developed a tradition which already possessed the sanction of twenty years' practice. Addington, Huskisson, Canning—who, as his biographer tells us, had in 1792 wavered between the two parties until he was forced into the Tory ranks by the insolence of the leading Whigs—Charles Long, George Rose, all these great men of humble origin owed their political career to Pitt. All were young when the century opened. In 1815, when all the leaders of the party once led by Fox were dead or dying, they were still active politicians—in many instances full of ambition and with a great future before them. Innovators love the young, and Pitt was an innovator. When, fifteen years before the close of the 18th century, the royal policy triumphed with Pitt's advent to power, the Tory party thus renovated found itself in sympathy, in more decided sympathy than the old Whigs, with the new currents of public opinion.

We have reached the period when economics first became a science, and when the teachings of industrial and commercial Liberalism were being widely accepted. Pitt adopted the ideas of the new school. He put into practice the sinking fund system preached by the economist, Richard Price. He concluded a commercial treaty with France in accordance with the doctrines of Adam Smith. It was only natural that he sought recruits for his party among the men whose interests were expressed by the new dogmas, among those who represented classes of growing importance—the new families of finance, of commerce, of manufacture. Cobbett in 1802 protested against the invasion of the governing class by these new-comers. "The ancient nobility and gentry of the kingdom," he said, "have, with a very few exceptions, been thrust out of all public employments. . . . A race of merchants and manufacturers and bankers and loan jobbers

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

and contractors have usurped their place."<sup>1</sup> And this was the period when the evangelical revival began to influence the English middle class, the very class in which these new fortunes were made and from which Pitt's party drew so many followers. Pitt was himself in sympathy with the movement. Wilberforce, the leader of the evangelical group in Parliament, was his friend and supporter. The four Thorntons, the Christian bankers, belonged both to the group over which Wilberforce presided and to the party of Pitt. This combination of business and Christianity, of trade and asceticism, lent itself to satire. "There always was," wrote Cobbett, "amongst the creature and close adherents of Mr. Pitt, a strange mixture of profligacy and cant: jobbers all the morning and Methodists in the afternoon."<sup>2</sup> Such, nevertheless, was the new spirit. Against this youthful ardour, this intense commercial and philanthropic activity, of what avail were the classical tirades of Fox, who read the *Aeneid* on his death-bed,<sup>3</sup> but admitted that he had never read the *Wealth of Nations*?<sup>4</sup>

<sup>1</sup> Cobbett's *Political Register*, July 10, 17, 1802 (vol. ii. p. 56). Cf. vol. iii. p. 159, January 29. February 5, 1803: "Yes, good honest men, plain men, men in the middle classes of life, as Mr. Wilberforce said, may be excellent judges of public measures; but, unfortunately, in searching after these men in the middle classes of life, we have gone too far, and have taken them out of the *lower* classes of life. But then comes the question *who* was it that stirred up these lees? It was Mr. Pitt." Cf. *Examiner*, October 30, 1814: "If a Whig and a Tory of the days of George the First could take a peep into our modern House of Commons, how they would stare to see a fox hunter (Mr. Ponsonby) at the head of the Whigs, and the merchants, almost to a man, supporting the party of the Tories."

<sup>2</sup> Cobbett's *Political Register*, June 30, 1804 (vol. v. p. 1024).

<sup>3</sup> Butler's *Reminiscences*, vol. i. pp. 187-8; Chalmers, *An Inquiry . . . 1805*, p. 245. Cf. *Diary of Lord Colchester*, June 19, 1806 (vol. ii. p. 71): "In talking of books upon political economy, he said (as I often heard him say in debates) that he had but little faith in Adam Smith or any of them, their reasons were so plausible but so inconclusive. That . . . in Greece, arts and arms engrossed the whole efforts of the human mind, and their progress and eminence in those pursuits had probably been the greater for their abandonment of all other pursuits, such as engaged modern nations in commerce, manufactures, etc."

<sup>4</sup> Lord Holland, *Memoirs of the Whig Party*, vol. i. pp. 264-5.

## POLITICAL INSTITUTIONS

During the ten years since Pitt's death, the Tories had, it is true, been visibly degenerating. They were on the way to become once more a party narrowly conservative, rural, out of touch with the progressive forces of the nation. The Industrialists had already begun to leave their ranks. In the Corn Bill debates Sir Robert Peel adopted an attitude of energetic opposition to the Cabinet. Pitt's former lieutenant George Rose, earned several months' popularity by an important speech delivered against the policy of agrarian protection, a speech drawn from him by the disgust which he experienced at the unfaithfulness of the Tories to his master's ideas. As the result of all these factors the year 1815 found at Westminster a discredited Opposition facing a discredited Government; this state of affairs was, however, of but a few years' standing. Just as, at the opening of the 18th century the Whig Party had consisted of an alliance of great landed families and merchants against the Tory gentry, in the same way a hundred years later the Tory Party as reconstituted by William Pitt was an alliance of the gentry and the industrialists against the great Whig families.

The revolutionary activity displayed by the Tories since the accession of George III was not confined to the Commons. It embraced the Lords also. Till 1760 the number of Peers had remained almost stationary. In 1688 there had been 150 Temporal Peers, in 1719 there were 178 and in 1760 there were only 174. These 174 Peers represented the *élite* of the old English families. In almost every case their titles were older than the reigning dynasty. The Whig spirit inspired this small circle. To extend the sphere of his influence George III decided to employ a method which would be strictly constitutional. By creating a sufficient number of Peers to swamp the Whig majority in the Upper House, while making these creations the reward for services done to himself in the Commons by the clients of the new Peers, he would strengthen simultaneously his position in both Houses. Few years passed without the creation of new Peers. Seven were created in 1776, eleven in 1780, eight in 1780. Between 1760 and 1784 forty-three Peers were created in all, exclusive of fifty-nine new Irish peerages, which did not carry with them a seat in the House of Lords. William

Pitt continued on a grander scale the system inaugurated by King George. Unfettered by aristocratic prejudice, unmoved by personal sympathies, he was swayed only by his ambition. His supremacy in the Commons was uncontested; and his intention to exercise the same authority over the Lords was evident, when in the course of a single session he made his intimate friend and colleague Grenville first a Peer, then Leader of the Upper House.<sup>1</sup>

During the seventeen years of his first Ministry, William Pitt created ninety-five new peerages, exclusive of seventy-seven Irish peerages.<sup>2</sup> Among them were lawyers, sailors, soldiers, and a few diplomatists. But in the majority of cases the new creations were due to electoral considerations. Already in 1792 it was calculated that nine of the Peers recently created, directly or indirectly, nominated through their influence twenty-four members of the House of Commons. As a rule, titles were conferred on members of old families. Thus the second son of the Duke of Northumberland was created Earl of Beverley, Sir James Lowther, Baron Lonsdale, and Mr. Henry Lascelles, Baron Harewood. The British aristocracy could further accept with equanimity the grant of an Irish peerage to Robert Clive, the military adventurer, famous for his conquest of India; nor need they feel dishonoured when a peerage of Great Britain with the title of Earl of Powis was bestowed on Clive's son, the patron of five seats in Shropshire and Montgomeryshire. Other creations, however, creations sufficiently numerous to excite contemporary indignation, had been frankly purchased with hard cash, or political services by men devoid of merit or birth.<sup>3</sup> The great creation of 1797, when

<sup>1</sup> Yonge, *Life of Lord Liverpool*, vol. i. pp. 14-15; Stanhope *Life of Pitt*, vol. ii. pp. 73-77.

<sup>2</sup> Well-nigh the entire marquisate dates from Pitt's administration. There had been but one English Marquis in 1784, in 1801 there were ten. There had not been a single Irish Marquis at the former date, in 1801 there were nine (John Hampden, jun., *The Aristocracy of England: a History for the People*, 1846). Cf. *Life of Wilberforce*, vol. iii. p. 412, letter to Hannah More, July 15, 1809: "Do you know that far more than half of the nobility both of England and Ireland has been raised to their present elevation since I came into public life?"

<sup>3</sup> We subject a list, no doubt incomplete (the pedigrees of noble families are often difficult to unravel), of the *nouveaux riches*

## POLITICAL INSTITUTIONS

sixteen peerages were conferred, excited particular scandal. There was an illusive air of antiquity about some of these titles, which served to dissimulate the novelty of the patent. When, for instance, the Duke of Bolton died without heirs, a Mr. Thomas Orde, who had wedded his natural daughter, adopted the title. Although there would no longer be a Duke of Bolton, there would be a Baron Bolton. Mr. Robert Smith, a London banker, discovered that in the 17th century the patronymic of the Lords Carrington had been Smith; therefore when he was raised to the peerage by Pitt he took the title of Baron Carrington.

This multiplication of peerages continued under Addington's Ministry, under Pitt's second Ministry, and under the Ministry of All the Talents. Five years witnessed the creation of twenty-eight English peerages and one Irish peerage. The number of Peers had been almost doubled since the accession of George III. After this the rate of creations diminished. Ministers of indifferent ability, timid and conservative, ceased to turn out Peers in batches. In 1810 a speaker belonging to the party in office stated that during the last three years, apart from the military peerages, themselves few in number, the Cabinet had only created

ennobled under George III. *Irish Peerages*: 1762, Baron Waltham of Philiptown (John Olmius); 1789, Baron Eardley of Spalding (Sir Sampson Eardley, formerly Gideon); 1789, Baron Cloncurry (Sir Nicholas Lawless, Bart.); 1790, Baron Caledon (James Alexander); 1792, Baron Oxmantoun (Laurence Harman Parsons); 1796, Baron Huntingfield (Sir Joshua Vanneck, Bart.); 1796, Baron Carrington (Robert Smith); 1797, Baron Teignmouth (Sir John Shore, Bart.); 1800, Baron de Blaquiere (John Blaquiere); 1800, Baron Henniker (Sir John Henniker, Bart.); 1806, Baron Rendlesham (Peter Isaac Thellusson). *English Peerages*: 1761, Baron Melcombe (George Bull, son of Bubb Dodington); 1796, Baron Gwydyr (Peter Burrell); 1797, Baron Carrington (Robert Smith); 1797, Baron Bolton (Thomas Orde-Powlett). Strictly speaking, we should not reckon among these the Irish peerage of Baron Teignmouth, which was of the same nature as that conferred on Clive. Sir John Shore, though of very humble origin, had won his position by his services in the office of the East India Company. See *Annual Register*, 1820; *Chronicle*, pp. 291-95. *Peerage of England . . . at the Accession of George the Fourth*. The account there given includes a reference to the particular grounds of the promotion of such as were ennobled or advanced in the reign of the late King. Seventy-one promotions are attributed to the wealth of the new Peer.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

two Peers.<sup>1</sup> From 1810 to 1812 the Regent was legally incapable of creating Peers.<sup>2</sup> But the years 1814 and 1815 witnessed once more the creation of peerages on a lavish scale.<sup>3</sup> These, however, had, strictly speaking, no political significance. The Government was obliged to find a reward for victorious generals—hence the majority of the new peerages.

Nevertheless, even for our present purpose we cannot afford to treat these military peerages as of no account. Still less can we leave out of consideration the legal peerages, now increasingly numerous. Both classes of peerage tended to change radically the character of the House of Lords. It was now no longer a close, or all but close, caste, but had become, to employ the phrase current in Napoleonic France, "open to talent." Significant of this change was the custom which had become common since the accession of George III of allowing admirals and generals on their elevation to the peerage to take their title not from an English locality but from the name of a victory. Napoleon took this English custom as his model. We must, of course, beware of pressing too far the parallel between the peerage of King George and the peerage of Napoleon. According to Pitt's system the peerage was open even more to intrigue than to merit, and in so far as it was open to merit, that merit was confined to the Government service. Scholars, men of letters and artists were still excluded. Nevertheless, the English conception of aristocracy was undoubtedly being modified. "God Almighty," Selden had written in the 17th century, "cannot make a gentleman," and Bailey, in the 1707 edition of his dictionary, did but develop Selden's paradox, when he defined a gentleman as a man who has received his nobility from his ancestors, not from the munificence of a Prince or a State.<sup>4</sup> At the beginning of the 18th century it was by no means uncommon for a gentleman to refuse to change the old family name which he derived from his

<sup>1</sup> H. of C., December 31, 1810 (*Parl. Deb.*, vol. xviii. p. 487).

<sup>2</sup> 51 Geo. III, cap. 1 (Regency Act), §§8.

<sup>3</sup> 1814: eight new peerages, of which six were military, two diplomatic; 1815: twelve new peerages, of which three were military, two diplomatic.

<sup>4</sup> See Sir James Laurence, *Of the Nobility of the British Gentry*, Paris, 1825.

## POLITICAL INSTITUTIONS

ancestors for a title which he would owe to the favour of the Sovereign.<sup>1</sup> The House of Lords was becoming more and more a house of noblemen, less and less a house of gentlemen.

Not only titles of nobility, orders of knighthood also were at the disposal of the executive, to reward services to the State, or the party, and to arrange English society in nicely graded ranks. In 1807 one of his friends on a visit to London wrote as follows to Constable the publisher. "On the whole, it is impossible not to admire the Peers; so truly noble-looking and finely dressed, with their stars, garters, etc., etc. They looked so much better than the other classes of mankind—the Commons even appeared to me like *trash* compared with them."<sup>2</sup> But these orders did not serve merely to augment the prestige of Peers; they provided a means of compensation for those who desired a peerage and whom it was impossible to satisfy. The Tories, therefore, while multiplying peerages, increased simultaneously the number and importance of the orders of knighthood. In 1783 George III founded the Irish order of St. Patrick as a counterpart to the English Garter and the Scottish Thistle.<sup>3</sup> When in 1786 his sons were invested with the Garter, he enlarged the order, and prescribed that it should henceforward consist of twenty-five knights, exclusive

<sup>1</sup> An expression of this feeling may be found in Miss Burney's novel, *Cecilia*, where an old family refuses to buy a peerage at the cost of its name (Book VIII, chap. iv., ed. 1784, vol. iv. p. 220): "Mr. Delvile angrily declared that though such a scheme might do very well for . . . a Peer of twenty years, his own noble ancestors should never, by his consent, forfeit a name which so many centuries had rendered honourable." Cf. *Diary of Miss Burney*. Miss Burney to Miss Crisp, April 6, 1782: "The people I have ever met with who have been fond of blood and family, have all scouted *title* when put in any competition with it. How, then, should these proud Delviles think a new-created peerage any equivalent for calling their sons' sons for future generations by the name of Beverley?" (ed. 1854, vol. ii. p. 107). Cf. *Memoirs and Correspondence . . . of Lord Combermere*, vol. i. pp. 19-20: "Sir, Robert Cotton was offered a peerage by Lord Shelburne, which he without hesitation declined, declaring that he preferred being a county member to taking his place at the bottom of the peerage."

<sup>2</sup> A. G. Hunter to A. Constable, March 15, 1807 (*Archibald Constable*, vol. i. p. 110).

<sup>3</sup> Nicolas *History of . . . Orders of Knighthood*, vol. iv. pp. 3 sqq.

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

of the King and his sons.<sup>1</sup> That the restoration of peace might be celebrated by a lavish distribution of honours, the Order of the Bath was reorganized, the number of knights considerably increased, and within the order itself was established a hierarchy of Grand Crosses, Commanders and Companions.<sup>2</sup> The reform aroused great opposition, not only among the great aristocratic families, but generally throughout the gentry. It was denounced as an imitation of the decorations distributed on the Continent, and a plagiarism of Napoleon's methods. The reformed order received the nickname of the "New Legion of Honour."<sup>3</sup> The imitation was undeniable. Nevertheless, it was hardly to be expected that popular opinion would share these prejudices of the aristocracy, or would take offence when to the hereditary hierarchy of peerages the Government added another and a strictly personal hierarchy of honours. If the Cabinet had entertained for a moment the idea of confining the new order to the nobility, the idea was immediately abandoned.<sup>4</sup> The primary object, nay the very *raison d'être* of the order, as of the Legion of Honour, was to reward meritorious service in the Army and Navy.<sup>5</sup> Nevertheless, the innovation was made of including in the first list of Companions of the Bath, Sir Joseph Banks, the President of the Royal Society, whose title to distinction was neither military nor political, but purely intellectual.

One final question remains. To what extent were the political colour and influence of the Upper House modified by these changes in its composition? For 1815 the question is difficult to answer. Only a conflict with the Commons could have settled the question decisively; but for the moment

<sup>1</sup> *Nicolas*, vol. ii. pp. 291 sqq.

<sup>2</sup> *Ibid.*, vol. iii. pp. 124 sqq., and *Annual Register*, 1815, *Appendix to Chronicle* (p. 134). The increase of feasts of arms meriting reward has necessitated, since 1792, the creation of a great number of "supernumerary companions" (*Nicolas, ibid.*, pp. 89 sqq.).

<sup>3</sup> For this attack see *Morning Post*, January 6, 10, 1815; *Examiner* January 15, 22, 29, 1815.

<sup>4</sup> *Letters and Dispatches of Lord Castlereagh*, vol. iv. pp. 167-8—Edward Thornton to Lord Liverpool, Kiel, January 18, 1814.

<sup>5</sup> The maximum number of Grand Crosses was seventy-two, of whom not more than twelve might be chosen "in consideration of eminent services rendered to the State by British subjects in civil and diplomatic employments."

## POLITICAL INSTITUTIONS

both Houses were agreed on all important points. The same class and the same party were dominant in both alike. It is, nevertheless, a fact worth remark that as a general rule the House of Lords defended established abuses with greater obstinacy than the Commons. The majority of its members owed their rank to the Crown, and were more closely attached to the reigning dynasty than in the days when the British aristocracy despised the Royal Family as a line of foreign intruders. And the self-made man is always the worst reactionary. The day was even now in sight when the House of Commons would yield more readily to the pressure of the nation's will; the Lords, on the other hand, would accomplish the prediction made by Wilkes when Pitt began to multiply his new peerages, and become the "dead weight" of the Constitution.<sup>1</sup>

We have yet to discover the effect on the national destiny of this conservatism of the Lords. The Commons would always possess the effective control of government. An ambitious statesman would have as little desire, as in the 18th century, to be promoted to the Upper House, and would regard such promotion as a restraint, indeed a sign that his active career had come to an end. The House of Lords was at most a check upon the Commons. It did not attempt to extend its right of revision in matters of finance, which had been extraordinarily curtailed in the course of the last century. Everything, in fact, points to the conclusion that not only had the prestige of the Upper House not increased, it had positively diminished. Its pomp was, indeed, still impressive. Nevertheless, at the time of the Revolution of 1688, when a peerage was a privilege confined to a very small number, a title was held in greater esteem than at present. If ever a conflict should arise between the two Houses, on any matter of importance, the Upper House would be adopting an extremely hazardous course if it should attempt,

<sup>1</sup> Butler, *Reminiscences*, ed. 3, vol. i. p. 78: "While the relation between the Minister and the new-made Peers shall subsist, their subserviency to his measures will continue; but when this relation ceases, the probability is that, as succeeding Ministers will not have the means of attacking them, they will form a silent sulky Opposition, a dead weight on every administration. Will it not then be found that the descendants of Mr. Pitt's Peers will be mutes to strangle his successors?"

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

in conjunction with the Crown, the defence of laws condemned by the popular chamber. It was now sixty years since the House of Lords had ceased to be an inviolable and immutable institution.

### *The Real Insignificance of the Tory Reaction.*

It must now be evident that the Tory reaction amounted, after all, to very little. The political passions exploited by the Tory leaders, the catchwords so dear to their lips, differed in no essential point from the mass of sentiments and commonplaces which had composed the Whiggery of sixty years earlier. In 1815, as in 1760, the party in office—though Whig then and Tory now—was the party of war, and moreover of war with France, and the Protestant party resolved to maintain the penal laws enacted against Catholics. The Tories of 1815, in their struggle against the Jacobin Revolution and the Empire, posed, as the Whigs had done formerly in their struggle against the Bourbons, as the defenders of the freedom of Europe, threatened with French domination. It was Burke,—a Whig who had gone over to Pitt's party, a great orator, a great writer, and, we must add, a great thinker—who developed, in opposition now to the new theories of democracy, as earlier in opposition to attempted encroachments of the Crown, the theory of a system inseparably liberal and aristocratic. The Tories, moreover, were supported, or rather had been supported during the greater part of the war, by the same combination of interests which had formerly supported the Whigs—by the world of finance, of commerce, of industry—that is by the most enterprising and innovating elements in the country. Nor is it true that the increase of the standing army was a danger to public liberty. The British Army possessed none of the characters of an army which could accomplish a *coup d'état*. Moreover, peace had scarcely been concluded before Parliament began to insist on the reduction of the military forces.

In fact, the reform of the public services had already been taken in hand, and attempts had even been made towards the reform of the franchise. And these were assuredly

## POLITICAL INSTITUTIONS

but the first symptoms of a mighty movement of reform. No doubt in 1815 the Cabinet and its supporters were obstinate defenders of every existing institution. The policy then predominant was essentially one of legislative stagnation. Nevertheless, a reform of the traditional body of legislation had already begun, and the stagnation had been far more complete in the period of Whig rule, when Walpole or Lord Chatham governed the country.

Nor had the system of government changed. There was still the same "mixed" Constitution of which we may say with Montesquieu that it was based on the "separation of powers," provided we do not understand thereby a separation rigidly defined by express statutes. It was a Constitution in which the lines of demarcation between the different powers were blurred and confused to the detriment indeed of the executive, but to the advantage of the legislature and public opinion. The Government was systematically weakened, always a prey to internal strife, and deprived by the Constitution itself of the necessary means to repress economic or religious disorders, the war of classes and of creeds. Nevertheless, in the course of the coming century the British Government was destined to give proof of greater stability than any other Government in Europe. How are we to explain the apparent paradox? We might point to a certain number of accidental circumstances as affording the solution of the problem. It might be said that England, as an insular State, could endure an anarchic Constitution, such as no continental State could accept, if it would not lie at the mercy of a foreign invader. It might also be said that it would be difficult for a revolution to alter the form of government in a country where, owing to the weakness and inertia of the executive, there existed no central authority of which an active minority might take possession to impart thus a new direction to the body politic. These explanations are not wholly worthless, but they are insufficient. What actually took place in England was this. The elements of disorder and anarchy inherent in the political tradition of the country, lost their character and submitted insensibly to the organization of a discipline freely accepted. Though sects multiplied, sectarian animosities died down. Riot was softened into peaceable demonstration, and civil war became a party

## A HISTORY OF THE ENGLISH PEOPLE IN 1815

strife, waged in accordance with rules freely admitted on either side. We must, therefore, seek elsewhere, in the character either of the economic organization or of the religious life of the nation, the secret of this progressive regulation of liberty.

## INDEX

America, Merchant Service, 82; War with, 85, 97, 102, 110, 132, 222  
Aristocracy, British, 246  
Army Administration, 101-2; anti-militarism, 97-101, 103, 127-130; attitude of great families towards, as career, 113-4; barracks, erection of, 104; billeting system, 101, 104; civil disturbances, 130; conditions of service, improvements, 109-110; and the Constitution, 70; corporal punishment, 211; discipline, lack of, 115-121; drunkenness in, 24; militia system, 97-101, 105-7; non-commissioned officers, 109, 120; officers, commissions, pay, promotion, etc., 111-3; organization, 118; recruiting system and bounties on enlistment, 109-110; reduction after peace of 1815 insisted on, 252; Regular Army, development of, 100-1, 105-8; rewards for services, 249-250; snobbery of, 115; Tory Reaction and, 102; training establishments, 117; victory against the French, 121-6  
Assizes, system, 150-1  
Association, right of, 199-205  
Austria, Treaty of Alliance with, 1815, 141  
Barristers, 43, 45-8; expenses of, 46; in Government offices, 47-8; professional etiquette, 43  
Bedford, Duke of, landowner, 171, 230  
Bentham, Jeremy, 57, 219, 231  
Bill of Rights, 1688, 204-5  
Bristol, election scandals, 187  
British Colonies, extension, 131-2; policy of British Government, 131-4; Secretariat of State, abolition, 132  
Burke, Edmund, 37-8, 44, 137, 232-3, 235, 243, 252  
Canning, George, 225-9, 232-3, 243  
Cape, British acquisition of the, 132  
Caroline, Princess, of Brunswick, wife of George IV; quarrel with husband, 25-6  
Cartwright, John, Major, reformer, 170, 177, 202-3, 219  
Casterreagh, Robert Stewart, Viscount, 31, 107, 138, 141-2, 162, 196-7, 225-7, 229, 237  
Catholics of Ireland and Great Britain, anti-Catholic riots, 1780, 194, 204; Emancipation, 162, 239, 242; Penal laws against, 252  
Charlotte, Princess, daughter of George IV, 26  
Cheshire, Luddite associations, 202  
Church of England, clergy, characteristics, living conditions, stipends, etc., 65  
Civil Administration, distinctive features of, 66-70; reforms, 233, 236  
Civil List, 25, 33  
Cochrane, Thomas, Earl of Dundonald, Rear-Admiral, 91, 93, 236  
Corn Bills, 176, 205-6, 238, 245  
Crown, attachment of House of Lords to, 251; contest with the Whigs, 27-41; influence of, 134; prerogative of, 27, 31, 70, 98-9, 233  
Cumberland, Ernest Augustus, Duke of (son of George III), 25, 155, 210  
Democratic government, development in, 241  
Denmark, Colonies returned to by Treaty of Paris, 132; separation of Norway from, 140  
East India Bill, 1784, 222, 242  
East India Company, 131-2  
Economics, as science, 243  
Education, Scottish universities, 157  
Elections, expenses, 165, 177, 186; laws and customs, 164-6, 171-3, 196; reform, 236-7; rioting at, 196-7; sale of seats, 174  
Executive, relation of Crown to, 28-31, 34-7; relation of judicature to, 55-6; weakness of, 143-5  
Exeter, Marquis of, 166, 174

## INDEX

Fox, Charles James, 38, 55, 102, 106-7, 195, 222, 224, 231, 235, 243-4

France, British Blockade of, 130-1; commercial treaty with, 243; concessions to, by Treaty of Paris, 132; Constitution, 137; invasion of, under Wellington, 123, 125, 135; Navy, 73, 95-6; peace with, movements for, 235; Treaty of Alliance with, 1815, 141; war with, 252

Franchise system, 156-193; boroughs, 188-193; burage boroughs, 178-182; corporation and freeman boroughs, 182-8; defects and merits of unreformed franchise, 188-193; in English counties, 164-9, 192; open boroughs, 169-177; reforms, 219, 233-8, 252; sale of votes, 173, 234; universal suffrage propaganda, 202

George III, 23-7, 33, 50, 53, 102, 174, 225, 248

George IV, as Prince Regent, 25-7, 34, 138, 227

Gibraltar, mutiny at, 24

Glasgow, anti-Corn Law agitation in, 205

Government departments, control of, 28; management of, abuses in, 34; reform movement, 37-41

Government offices, sale of, practice and abolition, 36, 39-40

Government officials, choice of, 31; permanent appointment of Civil servants, 35, 53; remuneration system, 29; reversionary appointments, 36, 40

Grenville, William Wyndham, Lord, 182, 224-5, 227-9, 231-2, 246

Grenville Act, 1770; limiting right of House of Commons to decide contested returns, 234

Grey, Charles, Lord, 195, 225, 227, 231, 235

Habeas Corpus Act, 200

Holland, Constitution, 137; Java returned to, by Treaty of Paris, 132

Holland House, 231-2

House of Commons, Army officers in, 113-4; exclusion of the public, attempts, 209; judges in, 48-9; modification of composition by Tory Government, 243-4; naval officers in, 93; relations with Upper House and nation, 250-1; representative system, 155; right to decide contested returns removed, 234; right to revise franchise, 234

House of Lords, effect of creation of new peerages on, 248; financial powers curtailed, 251; judges in, 50; modification of composition by Tory Government, 243, 245; political effect of changes in composition, 250

Huskisson, William, 226, 229, 243

Impeachment, procedure by, 34

India, British rule in, 131-2; French factories, 132

Industrial Revolution, 100

Ireland, Catholic emancipation movement, 162; local government, 160; peerage creations by George III, 245-8; representation in House of Commons and franchise system, 158-162

Jacobinism, 242, 252; anti-Jacobinism, 136, 235

Jenkinson, Robert Banks, *see* Liverpool, Earl of

Judges, 48-9; appointment method, 53-4; in Parliament, 49-51; tenure of office, 53

Judicature, 41-59; abuses and reform movement, 57-9; circuit system, 59; local justice, 59-66; relation to other powers, 49-56

Jury system, 150-5, 208

Justices of the peace, 61-70

Lancashire, anti-Corn Law agitation in, 205; Luddite associations, 202-3; rioting in, 1812, 195

Law Courts, abuses in, and reform movement, 57-9; judgeships, 49

Legislature, reforms, 252; relation of the Crown to, 31-2; relation of the judiciary to, 49-56

Libel, Government prosecutions, 207-212

Liverpool, Robert Banks Jenkinson, Earl of, 142-3, 176, 217, 227, 237

Local government, 60, 147-150

London, police system, 68-9; riots, 129, 193-7

Lord Chancellorship, 49, 55

Luddite associations, 202-3

Magistrates, 154, *see also* Justices of the Peace; stipendiary, 69

Mahratta confederation, British protectorate, 131

Mauritius, 133; British acquisition of, 132

Melville, Henry Dundas, Lord, First Lord of the Admiralty, 40, 157, 204

Mercantile Marine, 78-80, 93

Militia, Act of 1786, 99

Mill, James, philosopher, 219

Mutiny Act, 100-1

Navy, administration, reform, 39; combined fleet movements, development, 76-7; condition and strength of, in 1792 and 1802, 71; corporal punishment, 84; crews, 78-85; desertions to America, 82, 85; mutinies, 1797-1801, 82-3; officers, conditions of service, 85-95; popularity enjoyed by, 73; press-gang system, 79; prizes and prize money, 88-9; and public opinion, 95-7; reforms of Lord St. Vincent, 84; religious spirit in, 94-5;

## INDEX

Navy administration—*contd.*  
 rewards for services, 250; ships and equipment and comparison with French, 73-7; shipwrights' apprentices, training of, 75

Neutral vessels, right of search, etc., claimed by Great Britain, 130-1  
 Norfolk, Charles Howard, Duke of, 186-7, 230, 242

Paris, British troops in, 135; police of, 70; Treaty of, 132, 142

Parliament, *see also* House of Commons and House of Lords; debates, Press reporting of, 207-10, 217; dissolution after Government defeat, 240-1; King's veto on decisions of, 31-3; and public opinion, 218-254; reform of, campaign, 219

Paymastership of 'Widows' Pensions, abolition of, 40

Peel, Sir Robert, 175-6, 191, 245

Peccages, multiplication of, 245-52

Peninsular War, 111, 117-122

Perceval, Spencer, Prime Minister, 154, 226-7

Petition, right of, 199, 204

Pitt, William, the younger, 33, 38-9, 41, 47, 93, 104, 118, 132, 158, 204, 222-6, 239-248

Police, system, 68-70

Portland, William Cavendish Bentinck, third Duke of, Prime Minister, 225, 242

Postal service, 60

Press, freedom of, 206-212; modern journalism, 212-8

Price, Richard, philosopher, economist and preacher, 243

Prussia, Anglo-French and Anglo-Austrian agreement against, 141

Quarter Sessions, 62-4, 150, 154

Rates, local, 148-9

Rebellion, right to, 193-8

Riot Act, 1714, 199

Riots, agrarian, 195; anti-Corn Law, 206; Luddite risings, 202

Romilly, Sir Samuel, law reformer, 47-8, 197, 220, 231, 237

Russia, Anglo-French and Anglo-Austrian agreement against, 141; campaigns, 122

St. Patrick, Order of, foundation, 249

St. Vincent, John Jervis, Earl, 39, 83-4, 89, 92

St. Vincent, Cape, battle of, 95

Salamanca, battle of, 123-4

Santa Lucia, British acquisition of, 132

Scheldt, free navigation demanded by Great Britain, 139

Scotland, Jury system, 152; representation in House of Commons and

Scotland, Jury system—*contd.*  
 franchise system, 156, 163; universities, 157

Sea, British command of the, 130-2

Self-government, methods of, 147

Seven Years' War, 111

Sheridan, Richard Brinsley, 26, 195, 206, 227

Sicily, constitution, 137

Sincurse offices, 30, 35; abolition of, Bill for, 40

Sinking Fund, 243

Smith, Sydney, 93

Society of the People's Friends, 192

Solicitors, as agents to landed proprietors, 43; social position, 43; sons, advancement of, 44-5

Spain, British blockade, 131; Constitution, 137

Sweden, annexation of Norway, 140

Tax collectors, disenfranchisement, 61

Thornton, Henry, M. P., banker, 177, 244

Tierney, George, 160, 177, 231, 236 (note)

Tories, 27-41, 242, 245, 252; advent of *nouveaux riches* class, 242; degeneration after Pitt's death, 245; foreign policy of, 139; increase of orders of knighthood, 249; Reaction, 23-7, 66, 102, 127, 252-4

Trafalgar, Battle of, 88, 94, 97

Vansittart, Nicholas, Chancellor of the Exchequer, 224

Vestry system, 148-9

Vienna Congress of, 135

Walcheren, Island of, expedition to, 225

Wales, franchise system, 163; judges, eligibility of, for seat in Parliament, 49

War Office, reform, 39

Waterloo, Battle of, 123-6; medal for, 97

Wellington, Arthur Wellesley, Duke of, 97, 109, 116-120, 122-6, 135, 142, 226-8

Westphalia, Peace of, 139

Whigs, 221-233, 245, 252; anti-militarism of, 127-8; creation of Peers to swamp majority of, 245; and the Crown, 27-41; decline in popularity, 243; and foreign policy, 140; and political reform, 233-240; great Whig families, 229-232

Whitbread, Samuel, 68, 230-1, 235-6, 241 (note)

Wilberforce, William, 99, 166, 182, 244

Windham, William, Secretary for War, 106, 110, 209, 217

York, Frederick Augustus, Duke of, (second son of George III), 25, 39, 102-3, 117, 204, 210, 237

Yorkshire, Luddite associations 202; rioting in, 1812, 195,

